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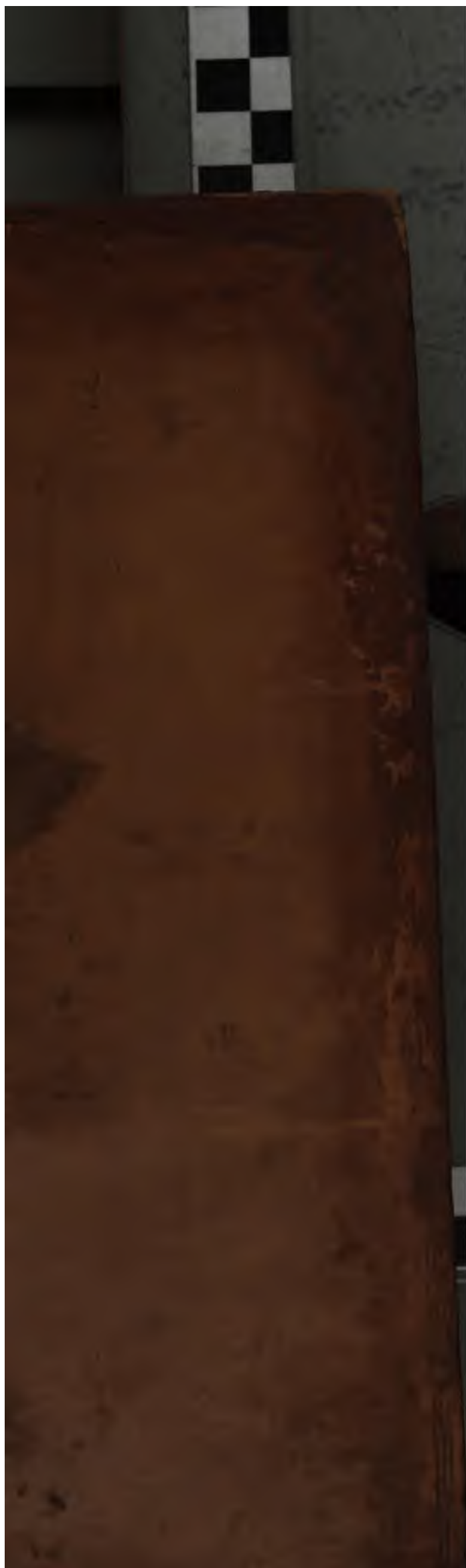
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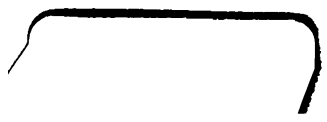
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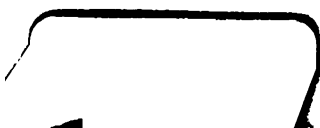
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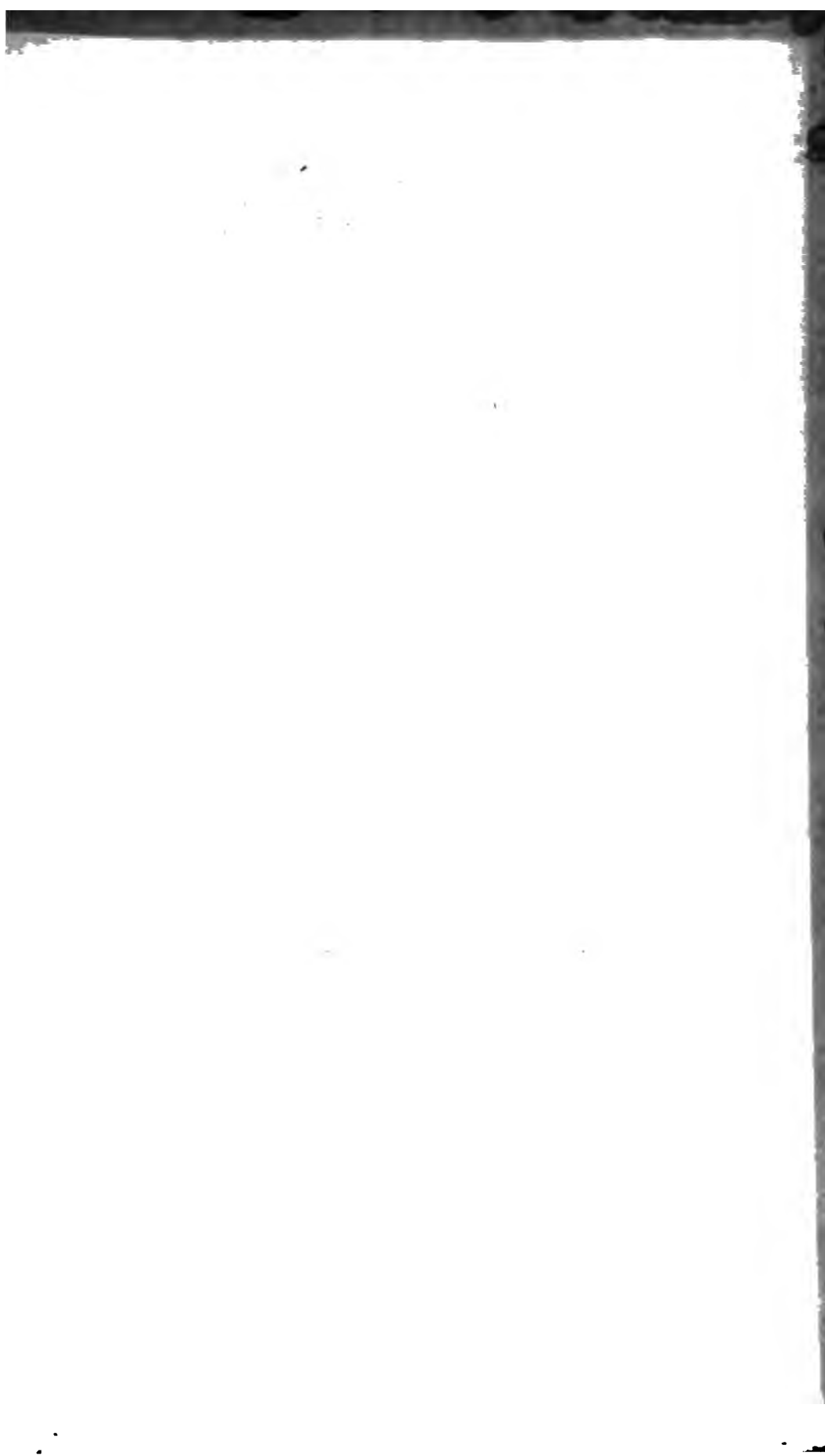


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# REVISED STATUTES

OF THE

**State of Maine,**

**Passed October 22, 1840.**

---

Entered according to act of Congress, in the year 1841, by PHILIP C. JOHNSON, Secretary of the State of Maine, in trust for said State, in the clerk's office of the district court of Maine.





THE  
**REVISED STATUTES**

OF THE  
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

**THE CONSTITUTIONS**

OF THE

*United States and of the State of Maine,*

AND TO WHICH ARE SUBJOINED THE OTHER

**PUBLIC LAWS OF 1840 AND 1841,**

WITH AN

**APPENDIX.**

---

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

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**Augusta:**  
PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.  
.....  
1841.

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## INTRODUCTION.

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THE report which formed the basis of these Revised Statutes was made to the legislature, on the first of January, 1840, by the Hon. Prentiss Mellen, Hon. Samuel E. Smith and Ebenezer Everett, Esq., the last commissioners appointed under the resolve of February 28, 1837, having been employed but little more than one year in its preparation. The printing of their report having been completed early in March, it was referred to a joint select committee, consisting of seven members of the senate, and twenty members of the house of representatives. This committee was authorized to sit during the recess, and the legislature adjourned to the seventeenth of September following. The committee met on the fourth of June, and, after a session of fifty six days, returned to the legislature the report of the revising commissioners, with various amendments. At the adjournment, the legislature, in a session of thirty six days closing on the twenty second of October, passed the act called the Revised Statutes. By a resolve of the last mentioned date, the undersigned were appointed commissioners, with directions, carefully to examine the copies of the Revised Statutes, transcribed from the originals in the secretary of state's office, revise the proof sheets, prepare suitable abstracts and marginal notes to the sections, and an exact and copious index of the whole, and personally to superintend the publication thereof; and that said statutes should be printed according to uniform rules of orthography and punctuation. Having performed these duties, with such care and ability as we could, we present this volume to the people of Maine.

Prefixed to the volume, are the constitutions of the United States and of Maine, with the several amendments which have been adopted thereto. Subjoined, are the other public acts of 1840 and 1841, with a list of acts unrepealed, and an appendix containing extracts from laws descriptive of the boundaries of the several counties, and certain other laws deemed desirable as subjects of reference.

In executing the duties of this commission, where a superfluous word has been found in the original, evidently inserted by mistake, it has been printed in

italics, and inclosed in brackets ; where a word has been found manifestly wanting to sustain the sense, it has been printed in the roman character, and inclosed in brackets ; and where an obviously wrong word has been used, it has been printed in italics, and succeeded by the word supposed to have been intended, in roman letters, and in brackets. By a careful comparison of this work, section by section, with the accumulated body of the public laws of twenty years, comprising nearly a thousand statutes, which are here condensed, a few instances have been discovered, of omissions of provisions of the existing laws, somewhat important, which were probably unintentional on the part of the revising commissioners and of the legislature. These, with other subjects, have been embodied in the act of amendment, passed by the present legislature, and inserted in this volume.

With a view to add to the usefulness and convenience of the work, we have subjoined to the marginal notes, references to statutes heretofore in force, containing corresponding provisions. We have also added, with considerable labor, references to the decisions in the Maine and Massachusetts reports, upon the various matters which are here made subjects of legislation. It will not be understood, however, that all the provisions of the former statutes have been substantially incorporated into, or that all the decisions are in accordance with, the sections, to which the references are affixed, though such is generally the fact ; yet, in many instances, it will be found, that the former statute has been only partially retained, or wholly abrogated, or that a new principle is adopted, precisely the reverse of that contained in the statute or decision to which reference is made. The intention has been, to facilitate a reference, not merely to those laws and decisions, here re-enacted or confirmed, but also to the supposed deficiencies and desiderata in former laws, which are here intended to be supplied, and to the history of the legislation upon the subjects connected therewith.

The index has been to us a work of no small difficulty. It contains a distinct, alphabetical *sub index* to each chapter, and the chapters, so prepared, are arranged, in the general index, in the alphabetical order of their subjects. We have thought, that this plan, when understood, would facilitate research, especially in the long chapters. The abstracts at the heads of the several chapters in the body of the work will serve as a guide to those who wish to examine them in a more analytical method.

Though great care has been used in the correction of the proof sheets, a few errors have since been discovered, which are noted in the table of errata. We

have compared the text of the Revised Statutes, contained in this volume, with the originals in the office of the secretary of state, and, with these exceptions, they appear to be correctly printed.

It will not be out of place here to remark, in respect to the distinguished individual, who was at the head of the revising commissioners, and who had also been chairman of the board of jurisprudence by whom the revision of 1821 was prepared, and for fourteen years, until he arrived at the constitutional limit, the chief expounder of the laws of this state, that he entered upon this work, with the ardor of youth, the vigor of middle age, and a maturity of intellect, ripened by the suns, yet scarcely chilled by the frosts of seventy four years. By him the major part of this work was prepared. This crowning labor of his useful life, he was permitted to accomplish, and to witness its adoption by the legislature, but not its publication. On the thirty first day of December, 1840, he rested from his earthly labors, in the seventy seventh year of his age. The memory of the kindness of *disposition*, the shining social powers, the purity of principle, and the exemplary life of the late chief justice Mellen is embalmed in the hearts of numerous friends; and a monument of his industry and ability as a lawyer, a legislator and a jurist will ever stand in high relief upon the legal history of the state.

PHILIP EASTMAN,  
EBEN<sup>R</sup> EVERETT.

AUGUSTA, MAY 17, 1841.



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<b>PAGE</b>	<b>65,</b>	<b>section 27,</b>	<b>line 18,</b>	<b>after "not,"</b>	<b>read "to."</b>
92,	46,	1,	for "She,"	read "The."	
119,	5,	3,	after "fife,"	for "a,"	read "or."
138,	62,	6,	for "offier,"	read "officer."	
405,	13,	1,	for "28,"	read "13."	
414,	3,	3,	for "couuty,"	read "county."	
440,	31,	4,	in a few copies,	for "on,"	read "or."
453,	28,	2,	—————	for "necessay,"	read "necessary."
500,	23,	2,	of the margin,	for "dease,"	read "cease."
619,	24,	2,	for "administrator of any contractors,"	read "administra-	tors of any contractor."

## INDEX.

837, 2d column,	1,	dele "MILITIA,"	so as to read OFFICERS <i>of the state</i> <i>prison.</i>
842, 2d	46,	for "527,"	read "537."
851, 1st	62,	for "610,"	read "616."
857, 2d	14,	for "163,"	read "162."
867, 2d	49,	for "368,"	read "308."
875, 1st	14,	for "wring,"	read "rung."
880, 1st	54,	for "775,"	read "475."

# CONSTITUTION

OF

## THE UNITED STATES.

---

**ARTICLE**

- I. Legislative power.
- II. Executive power.
- III. Judicial power.
- IV. Relative rights of states.
- V. How the constitution may be amended.
- VI. Of former debts, supremacy of the constitution and laws of the United States, and oath required of public officers.
- VII. Of the ratification of the constitution.

**AMENDMENTS.**

- 1. Religious freedom and the rights of speech, the press and petition.
- 2. Right to bear arms.
- 3. Restrictions on quartering troops.

- 4. Restrictions on the right of search and seizure.
- 5. Rights of persons charged with crimes, and of private property.
- 6. Mode of trial in criminal cases.
- 7. Of trials by jury in civil actions.
- 8. Of excessive bail, and restrictions on fines and other punishments.
- 9. Rights reserved to the people.
- 10. Powers retained by the states and people.
- 11. United States' courts not to have jurisdiction of suits brought by individuals against one of the states.
- 12. Manner of choosing president and vice president.

**WE**, the people of the United States, in order to form a more Preamble.  
 perfect union, establish justice, insure domestic tranquillity, provide  
 for the common defence, promote the general welfare, and secure  
 the blessings of liberty to ourselves and our posterity, do ordain and  
 establish this constitution for the United States of America.

### ARTICLE I.

**SECTION I.**

1. All legislative powers herein granted shall be vested in a Legislative powers vested in congress.  
 congress of the United States, which shall consist of a senate and  
 house of representatives.

**SECTION II.**

1. The house of representatives shall be composed of members House of representatives how composed. 11 Mass. 424.  
 chosen every second year by the people of the several states; and  
 the electors in each state shall have the qualifications requisite for  
 electors of the most numerous branch of the state legislature.



**Qualification of a representative.** 2. No person shall be a representative, who shall not have attained to the age of twenty-five years and been seven years a citizen of the United States; and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

**Apportionment of representatives and direct taxes.** 3. Representatives and direct taxes shall be apportioned among the several states, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand; but each state shall have at least one representative; and until such enumeration shall be made, the state of *New Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode Island* and *Providence plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

**Census.** 4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

**Vacancies to be filled.** 5. The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

**House of representatives to choose their own officers. Power of impeachment.**

## SECTION III.

**Senate, how composed.** 1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

**How classified.** 2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year; so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments, until the next meeting of the legislature, which shall then fill such vacancies.

**Of temporary appointments.** 3. No person shall be a senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

**Qualifications of a senator.**

4. The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided. Vice president to be president of the senate.

5. The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States. President pro tem. and other officers may be chosen.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present. Power to try impeachments.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law. Effect of judgment in such cases.

SECTION IV.

1. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators. Times, places and manner of electing members of congress.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day. Sessions annual, at least.

SECTION V.

1. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide. Membership. Quorum. Adjournments.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two thirds expel a member. Rules and orders. Censures and expulsion.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one fifth of those present, be entered on the journal. Journals of each house.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor Limitation of the right to adjourn.

to any other place than that in which the two houses shall be sitting.

## SECTION VI.

Compensation and privileges.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to, or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

To what offices members of congress may not be appointed.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

## SECTION VII.

Of bills for raising revenue.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

Of the president's veto, in case of bills.

2. Every bill, which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to re-consider it. If after such re-consideration, two thirds of the house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be re-considered; and if approved by two thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president, within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return; in which case it shall not be a law.

Also in case of concurrent orders, resolutions or votes.

3. Every order, resolution or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and, before the same shall take effect, shall be

approved by him ; or being disapproved by him, shall be repassed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

The congress shall have power,

Powers of congress.

1. To lay and collect taxes, duties, imposts and excises ; to pay the debts and provide for the common defence and general welfare of the United States ; but all duties, imposts and excises shall be uniform throughout the United States :

3 Dall. 171.

2. To borrow money on the credit of the United States :

2 Peters 440, 468.

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes :

9 Wheat. 1, 209, 11 Peters 102.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States :

2 Wheat. 259, 4 Wheat. 122, 209. 12 Wheat. 213.

5. To coin money ; regulate the value thereof and of foreign coin ; and fix the standard of weights and measures :

6. To provide for the punishment of counterfeiting the securities and current coin of the United States :

7. To establish post offices and post roads :

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors, the exclusive right to their respective writings and discoveries :

9. To constitute tribunals inferior to the supreme court : To define and punish piracies and felonies committed on the high seas, and offences against the law of nations :

5 Wheat. 153.

10. To declare war ; grant letters of marque and reprisal ; and make rules concerning captures on land and water :

8 Cranch 110.

11. To raise and support armies ; but no appropriation of money to that use shall be for a longer term than two years :

12. To provide and maintain a navy :

13. To make rules for the government and regulation of the land and naval forces :

14. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions :

12 Wheat. 19.

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States ; reserving to the states respectively, the appointment of the officers and the authority of training the militia, according to the discipline prescribed by congress :

16. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States ; and to exercise

- 8 *Mass.* 72. like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards and other needful buildings: and
- 2 *Cranch* 358. 17. To make all laws, which shall be necessary and proper for  
 Wheat. 316. carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

## SECTION IX.

- Restrictions upon the powers of congress. 1. The migration or importation of such persons, as any of the  
 1 *Wash. C. C.* states now existing shall think proper to admit, shall not be prohib-  
 R. 499. ited by the congress, prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.
2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.
3. No bill of attainder, or ex post facto law, shall be passed.
4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration, herein before directed to be taken.
5. No tax or duty shall be laid on articles exported from any state. No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; nor shall vessels, bound to or from one state, be obliged to enter, clear, or pay duties in another.
6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.
7. No title of nobility shall be granted by the United States; and no person, holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince or foreign state.

## SECTION X.

- Powers withheld from the individual states. 1. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.
- 5 *Wheaton* 420.  
 8 *Peters* 88.

2 *Gall. C. C. R.* 138. 3 *Peters* 289. 4 *Peters* 431, 514. 6 *Cranch* 87. 6 *Pick.* 440.  
 3 *Wash. C. C. R.* 313. 7 *Peters* 243. 4 *Wheat.* 518. 12 *Wheat.* 370. 11 *Peters* 420, 257.  
 15 *Mass.* 447. 16 *Mass.* 245. 2 *Fair.* 118.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.

Congress may permit certain acts, otherwise prohibited to the states. 12 Wheat. 419.

## ARTICLE II.

### SECTION I.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the vice president, chosen for the same term, be elected as follows:

President and vice president.

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Electors of those officers.

3. *The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves: and they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed: and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president: and if no person have a majority, then from the five highest on the list, the said house shall in like manner choose the president: but in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the*

Original mode of electing president and vice president.

Amendment 12 substituted for the third clause in art. 2, sec. 1.

*president, the person having the greatest number of votes of the electors, shall be the vice president. But if there should remain two or more, who have equal votes, the senate shall choose from them by ballot, the vice president.*

Time of choosing electors and when they shall vote.

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes ; which day shall be the same throughout the United States.

Qualifications of president.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president: neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Provisions for cases of vacancy in that office.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president ; and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

President's compensation.

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected ; and he shall not receive, within that period, any other emolument from the United States, or any of them.

His oath.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation :

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

## SECTION II.

President to be commander-in-chief.  
May require the opinion of the heads of departments.

1. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officer in each of the executive departments upon any subject, relating to the duties of their respective offices ; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

Reprieves and pardons.

Of treaties and foreign intercourse.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators

present concur ; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law : but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

Appointment of public officers.  
2 Brockenb. C. C. R. 96.

3. The president shall have power to fill up all vacancies, that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

Of vacancies in the recess of the senate.

SECTION III.

1. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient ; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper : he shall receive ambassadors and other public ministers ; he shall take care that the laws be faithfully executed ; and shall commission all the officers of the United States.

Further powers and duties.

SECTION IV.

1. The president, vice president and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Of removal of officers of the U. S. by impeachment.

ARTICLE III.

SECTION I.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Judicial power, how vested.

Tenure of office.

Compensation.

SECTION II.

1. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority ; to all cases affecting ambassadors, other public ministers and consuls ; to all cases of admiralty and maritime jurisdiction ; to controversies to which the United States shall be a party ; to controversies between two or more states, *between a state and citizens of another state,*

Extent of the judicial power.  
1 Wheat. 304.  
6 Peters 515.

5 Cranch 61.  
2 Gall. C. C. R. 398, 474, 5.  
3 Wheat. 336.  
9 Wheat. 738.  
See amendment 11.



between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

Original and appellate jurisdiction of the supreme court. 5 Peters 1.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations, as the congress shall make.

Of trial by jury.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trials shall be held in the state where the said crimes shall have been committed ; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

Where to be held.

SECTION III.

Definition of treason and mode of proof.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Its punishment.

2. The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECTION I.

Mutual credit to be given to the public acts of the states. Mode of authenticating. 7 Cranch 481. 17 Mass. 521. 9 Mass. 462. 1 Caines 460. 1 Fairf. 278.

Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION II.

Reciprocal right of citizenship. 6 Pick. 89. Fugitives from justice.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

2. A person charged in any state with treason, felony or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Fugitives from service or labor, required under the laws of certain states, to be delivered up.

3. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor ;

but shall be delivered up on claim of the party, to whom such service or labor may be due. 1 Wash. C. C. R. 499.  
2 Pick. 11.

SECTION III.

1. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress. Admission of new states.

2. The congress shall have power to dispose of, and make all needful rules and regulations, respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed, as to prejudice any claims of the United States, or of any particular state. Power of congress as to the territory and other property of the U. S.  
1 Peters 511, 546.

SECTION IV.

The United States shall guarantee to every state in the Union a republican form of government; and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened,) against domestic violence. Obligation of the U. States to protect the several states.

ARTICLE V.

The congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress: *Provided*, that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate. How the constitution may be amended.  
  
Proviso.

ARTICLE VI.

1. All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation. Debts under the confederation assumed by the U. States.

2. This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land: and the judges in every state shall be Supremacy of U. States' constitution and laws.  
4 Wheat. 316.  
Peters C. C. R. 390.

1 Wash. C. C.  
R. 322.  
6 Peters 515.

bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

Oath required  
of public offi-  
cers.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

No religious  
test.

## ARTICLE VII.

Ratification of  
this constitu-  
tion.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution, between the states so ratifying the same.

DONE IN CONVENTION, by the unanimous consent of the states present, the seventeenth day of September in the year of our Lord, one thousand seven hundred and eighty-seven, and of the independence of the United States of America, the twelfth.

NOTE.—The foregoing constitution was by the votes of nine states represented in congress, on the thirteenth day of September, one thousand seven hundred and eighty-eight, declared to have been ratified in the manner therein prescribed; and the first Wednesday of March then next was designated as the time for commencing proceedings under the same.

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## AMENDMENTS TO THE CONSTITUTION

*Adopted in pursuance of the fifth article of the original constitution.*

Religious free-  
dom, and the  
rights of speech,  
the press and  
petition.

ART. 1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Right to bear  
arms.

ART. 2. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Restrictions on  
quartering  
troops.

ART. 3. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Restrictions on  
search and sei-  
zure.

ART. 4. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**ART. 5.** No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

Rights of persons charged with crimes and of private property.

7 Peters 243.  
2 Dall. 304.  
2 Peters 380,  
657.

**ART. 6.** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district, wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

Mode of trial in criminal cases.

**ART. 7.** In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Of trial by jury in civil actions.  
1 Gall. C. C. R. 19.  
2 Peters 523.  
14 Mass. 412.

**ART. 8.** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Of bail. Of fines or other punishments.

**ART. 9.** The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

Rights reserved to the people.

**ART. 10.** The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Powers retained by the states and people.  
3 Wash. C. C. R. 313.  
11 Peters 257.

**ART. 11.** The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

U. States' courts not to have jurisdiction of suits brought by individuals against one of the states.  
3 Dall. 378.

**ART. 12.** The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in

Manner of choosing president and vice president.

Choice by house of representatives in case of no election by the electors.

the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose, immediately, by ballot the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice: and if the house of representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of president.

Choice of vice president by the senate, in case of no election by the electors.

The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president; a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

His qualifications.

But no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

**NOTE.**—The first ten of the foregoing amendments were proposed at the first session of the first congress, held under the constitution; the eleventh amendment was proposed at the second session of the third congress; and the twelfth at the first session of the eighth congress: they were all adopted by the number of states required by the fifth article of the original constitution.

**CONSTITUTION**  
**OF THE**  
**STATE OF MAINE,**

FORGED IN CONVENTION AT PORTLAND, OCTOBER TWENTY-NINTH, AND ADOPTED BY  
THE PEOPLE IN TOWN MEETINGS ON THE  
SIXTH OF DECEMBER, A. D. 1819, AND OF THE INDEPENDENCE OF THE  
UNITED STATES THE FORTY-FOURTH.

**PREAMBLE.**

Objects of government.

**ARTICLE I.**

**SECT. 1.** Natural rights.

2. All power inherent in the people.
3. Religious freedom. All religious sects equal. Religious tests prohibited.
4. Freedom of speech and publication. Truth may be given in evidence.
5. Unreasonable searches.
6. Rights of persons accused.
7. No person to answer to a capital or infamous crime but on indictment. Exceptions. Juries.
8. Not to be put in jeopardy twice for one crime.
9. Sanguinary laws prohibited.
10. Bailable offences. Habeas corpus.
11. Bills of attainder, &c. prohibited.
12. Treason.
13. Suspension of laws.
14. Corporal punishment under military law.
15. Right to petition.
16. To keep and bear arms.
17. Standing armies not to be kept.
18. No soldiers to be quartered on citizens in time of peace.
19. Right of redress for injuries.
20. Trial by jury.
21. Private property not to be taken without compensation.
22. Taxes.
23. Titles of nobility prohibited.
24. Other rights not impaired.

**ARTICLE II.**

- SECT. 1.** Qualifications of electors. Soldiers and seamen in the United States service. Students at colleges or academies.
2. Electors exempt from arrest on days of election.
  3. And from military duty.
  4. Time of election.

**ARTICLE III.**

- SECT. 1.** Powers distributed.
2. Powers to be kept separate.

**ARTICLE IV.—PART FIRST.**

- SECT. 1.** Legislative department. Style of acts.
2. House of representatives to consist of not less than 100 nor more than 200. Number of inhabitants to be ascertained once in ten years at least. Representatives to be apportioned among the counties.
  3. Apportionment among towns.
  4. Qualifications of a representative.
  5. Meetings for choice of representatives. Meetings of classed towns.
  6. Vacancies to be filled.
  7. House to choose its officers.
  8. Power of impeachment.

**ARTICLE IV.—PART SECOND.**

- SECT. 1.** Senate to consist of not less than 20, nor more than 31.
2. State to be districted once in ten years.
  3. Meetings for choice of senators. Electors in unincorporated places.

- SECT. 4. Votes to be examined by the governor and council.
5. Senate to decide as to the election of its members. Vacancies how supplied.
  6. Qualifications of senators.
  7. Senate to try impeachments. Party liable to be tried and punished.
  8. Senate to choose its officers.

ARTICLE IV.—PART THIRD.

- SECT. 1. Legislature to meet annually. Its powers.
2. Acts to be signed by the governor. Proceedings in case he disapprove. Bills to be returned by him in five days.
  3. Each house to judge of elections. Majority a quorum.
  4. May punish and expel members.
  5. To keep a journal. Yeas and nays.
  6. May punish for contempt.
  7. Compensation of members. Travelling expenses.
  8. Members exempted from arrest. Freedom of debate.
  9. Either house may originate bills. Exceptions; money bills.
  10. Members not to be appointed to certain offices. Proviso.
  11. Persons disqualified to be members.
  12. Adjournments.

ARTICLE V.—PART FIRST.

- SECT. 1. Governor.
2. Elected for one year.
  3. Meetings for choice of governor. Votes to be returned to secretary of state. Provision in case there is no choice.
  4. Qualifications of governor.
  5. Disqualifications.
  6. Compensation.
  7. Commander-in-chief of the militia. Not to march the militia out of the state.
  8. With advice of the council to appoint officers.
  9. To communicate information to the legislature.
  10. May require information of any officer.
  11. May remit penalties, and grant pardons.
  12. To enforce the laws.
  13. To convene the legislature on extraordinary occasions, and adjourn it in case of disagreement.
  14. Vacancy how supplied.

ARTICLE V.—PART SECOND.

- SECT. 1. Council to consist of seven.
2. Counsellors how chosen.

- SECT. 3. Journal to be kept of their proceedings.
4. Persons disqualified to be counsellors. Not to be appointed to any office.

ARTICLE V.—PART THIRD.

- SECT. 1. Secretary how chosen.
2. To keep the records of the state.
  3. To attend the governor and council.
  4. To preserve the records of the executive and legislative departments.

ARTICLE V.—PART FOURTH.

- SECT. 1. Treasurer how chosen: ineligible for more than five years in succession.
2. To give bond.
  3. Not to engage in trade, &c.
  4. No money to be drawn but by warrant.

ARTICLE VI.

- SECT. 1. Supreme and other courts.
2. Compensation of justices of S. J. court.
  3. To give their opinions when required by either branch of the government.
  4. Tenure of judicial offices.
  5. Justices of the peace and notaries.
  6. Justices of the supreme judicial court to hold no other office.

ARTICLE VII.

- SECT. 1. Military officers, by whom elected.
2. Manner of conducting elections.
  3. Major generals. Adjutant general. Staff officers.
  4. Organization of the militia.
  5. Who may be exempted from military duty.

ARTICLE VIII.

- SECT. 1. Legislature to require of towns to support public schools. Shall endow colleges and academics. Proviso.

ARTICLE IX.

- SECT. 1. Oaths and subscriptions. Before whom to be taken.
2. Offices that are incompatible with each other.
  3. Commissions.
  4. Elections on the first day of January may be adjourned from day to day.
  5. Every civil officer may be removed by impeachment or address.
  6. Tenure of office.
  7. Valuation.

SECT. 8. Real estate to be taxed according to its value.

ARTICLE X.

- SECT. 1. Meeting of the first legislature. Elections for 1820. Senators apportioned. Representatives apportioned. Powers and duties of secretary of state pro tem. in relation to the votes.
2. Duration of the first legislature.
3. Laws now in force continue until repealed.
4. Constitution, how amended.

SECT. 5. Persons in office to continue to hold their offices. Part of a law of Massachusetts made a part of the constitution.

6. Constitution to be enrolled on parchment.

AMENDMENTS.

- ART. 1. Meetings in cities for election of representatives and other civil officers regulated.
- II. Certain offences not bailable.
- III. Tenure of judicial offices.

We the people of Maine, in order to establish justice, insure Preamble.  
tranquillity, provide for our mutual defence, promote our common welfare, and secure to ourselves and our posterity the blessings of liberty, acknowledging with grateful hearts the goodness of the Sovereign Ruler of the Universe in affording us an opportunity, so favorable to the design ; and, imploring his aid and direction in its accomplishment, do agree to form ourselves into a free and independent state, by the style and title of the STATE OF MAINE, and do ordain and establish the following constitution for the government of the same.

ARTICLE I.

*Declaration of rights.*

SECTION 1. All men are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness. Natural rights.  
2 Greenl. 275.  
6 Greenl. 412.

SECT. 2. All power is inherent in the people ; all free governments are founded in their authority and instituted for their benefit ; they have therefore an unalienable and indefeasible right to institute government, and to alter, reform, or totally change the same, when their safety and happiness require it. All power inherent in the people.

SECT. 3. All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no one shall be hurt, molested or restrained in his person, liberty or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience, nor for his religious professions or sentiments, provided he does not disturb the public peace, nor obstruct others in their religious worship ;—and all persons demeaning themselves peaceably, as good members of the state, shall be equally under the protection of the laws, and no subordination nor preference of any one sect or denomination to another shall ever be established by law, nor shall any religious test be required Religious freedom.  
All religious sects equal.  
Religious tests prohibited.



as a qualification for any office or trust, under this state; and all religious societies in this state, whether incorporate or unincorporate, shall at all times have the exclusive right of electing their public teachers and contracting with them for their support and maintenance.

Freedom of speech and publication.

SECT. 4. Every citizen may freely speak, write and publish his sentiments on any subject, being responsible for the abuse of this liberty; no laws shall be passed regulating or restraining the freedom of the press; and in prosecutions for any publication respecting the official conduct of men in public capacity, or the qualifications of those who are candidates for the suffrages of the people, or where the matter published is proper for public information, the truth thereof may be given in evidence, and in all indictments for libels, the jury, after having received the direction of the court, shall have a right to determine, at their discretion, the law and the fact.

Truth may be given in evidence.

Unreasonable searches.  
13 Mass. 286.

SECT. 5. The people shall be secure in their persons, houses, papers and possessions from all unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without a special designation of the place to be searched, and the person or thing to be seized, nor without probable cause—supported by oath or affirmation.

Rights of persons accused.  
2 Fairf. 208.

SECT. 6. In all criminal prosecutions, the accused shall have a right to be heard by himself and his counsel, or either, at his election; To demand the nature and cause of the accusation, and have a copy thereof;

To be confronted by the witnesses against him;

To have compulsory process for obtaining witnesses in his favor;

1 Greenl. 230.  
8 Greenl. 365.  
2 Fairf. 208.

To have a speedy, public and impartial trial, and, except in trials by martial law or impeachment, by a jury of the vicinity. He shall not be compelled to furnish or give evidence against himself, nor be deprived of his life, liberty, property or privileges, but by judgment of his peers or the law of the land.

No person to answer to a capital or infamous crime but on indictment. Exceptions.

SECT. 7. No person shall be held to answer for a capital or infamous crime, unless on a presentment or indictment of a grand jury, except in cases of impeachment, or in such cases of offences, as are usually cognizable by a justice of the peace, or in cases arising in the army or navy, or in the militia when in actual service in time of war or public danger. The legislature shall provide by law a suitable and impartial mode of selecting juries, and their usual number and unanimity, in indictments and convictions, shall be held indispensable.

Juries.

4 Greenl. 439.

Not to be put in jeopardy twice for one crime.

SECT. 8. No person, for the same offence, shall be twice put in jeopardy of life or limb.

Sanguinary laws prohibited.

SECT. 9. Sanguinary laws shall not be passed; all penalties and punishments shall be proportioned to the offence: excessive bail

shall not be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.

SECT. 10. *All persons, before conviction, shall be bailable, except for capital offences, where the proof is evident or the presumption great.* And the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Bailable offences. See amendments. Art. 11. Habeas corpus.

SECT. 11. The legislature shall pass no bill of attainder, *ex post facto* law, nor law impairing the obligation of contracts, and no attainder shall work corruption of blood nor forfeiture of estate.

Bills of attainder, &c. prohibited. 5 Greenl. 66. 6 Greenl. 112, 355. 7 Greenl. 474. 2 Fairf. 109, 118, 234. Treason.

SECT. 12. Treason against this state shall consist only in levying war against it, adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

SECT. 13. The laws shall not be suspended but by the legislature or its authority.

Suspension of laws.

SECT. 14. No person shall be subject to corporal punishment under military law, except such as are employed in the army or navy, or in the militia when in actual service in time of war or public danger.

Corporal punishment under military law.

SECT. 15. The people have a right at all times in an orderly and peaceable manner to assemble to consult upon the common good, to give instructions to their representatives, and to request, of either department of the government by petition or remonstrance, redress of their wrongs and grievances.

Right of petition.

SECT. 16. Every citizen has a right to keep and bear arms for the common defence ; and this right shall never be questioned.

To keep and bear arms.

SECT. 17. No standing army shall be kept up in time of peace without the consent of the legislature, and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

Standing armies not to be kept.

SECT. 18. No soldier shall in time of peace be quartered in any house without the consent of the owner or occupant, nor in time of war, but in a manner to be prescribed by law.

No soldiers to be quartered on citizens in time of peace.

SECT. 19. Every person, for an injury done him in his person, reputation, property or immunities, shall have remedy by due course of law ; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay.

Right of redress for injuries.

SECT. 20. In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practised : the party claiming the right may be heard by himself and his counsel, or either, at his election.

Trial by jury. 3 Greenl. 97.

SECT. 21. Private property shall not be taken for public uses without just compensation ; nor unless the public exigencies require it.

Private property not to be taken without compensation.

**Taxes.**           **SECT. 22.** No tax or duty shall be imposed without the consent of the people or of their representatives in the legislature.

**Titles of nobility prohibited.**   **SECT. 23.** No title of nobility or hereditary distinction, privilege, honor or emolument, shall ever be granted or confirmed, nor shall any office be created, the appointment to which shall be for a longer time than during good behavior.

**Other rights not impaired.**   **SECT. 24.** The enumeration of certain rights shall not impair nor deny others retained by the people.

## ARTICLE II.

### *Electors.*

**Qualifications of electors.**  
7 Greenl. 497.

**SECT. 1.** Every male citizen of the United States of the age of twenty one years and upwards, excepting paupers, persons under guardianship, and Indians not taxed, having his residence established in this State for the term of three months next preceding any election, shall be an elector for governor, senators and representatives, in the town or plantation where his residence is so established; and the election shall be by written ballot. But persons in the military, naval or marine service of the United States, or this state, shall not be considered as having obtained such established residence by being stationed in any garrison, barrack or military place, in any town or plantation; nor shall the residence of a student at any seminary of learning entitle him to the right of suffrage in the town or plantation where such seminary is established.

7 Greenl. 492, 497.  
Soldiers and seamen in the United States service.

Students at colleges and academies.

**Electors exempt from arrest on days of election.**  
8 Greenl. 187.  
And from military duty.

**Time of election.**

**SECT. 2.** Electors shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest on the days of election, during their attendance at, going to, and returning therefrom.

**SECT. 3.** No elector shall be obliged to do duty in the militia on any day of election, except in time of war or public danger.

**SECT. 4.** The election of governor, senators and representatives, shall be on the second Monday of September annually forever.

## ARTICLE III.

### *Distribution of powers.*

**Powers distributed.**  
3 Greenl. 326.  
4 Greenl. 140.

**SECT. 1.** The powers of this government shall be divided into three distinct departments, the *legislative*, *executive* and *judicial*.

**Powers to be kept separate.**  
3 Greenl. 372, 484. 7 Greenl. 14.

**SECT. 2.** No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.

ARTICLE IV.—PART FIRST.

LEGISLATIVE POWER.

*House of Representatives.*

SECT. 1. The legislative power shall be vested in two distinct branches, a house of representatives, and a senate, each to have a negative on the other, and both to be styled the *Legislature of Maine*, and the style of their acts and laws, shall be, "*Be it enacted by the senate and house of representatives in legislature assembled.*"

Legislative department.

Style of acts.

SECT. 2. The house of representatives shall consist of not less than one hundred nor more than two hundred members, to be elected by the qualified electors for one year from the day next preceding the annual meeting of the legislature. The legislature, which shall first be convened under this constitution, shall, on or before the fifteenth day of August in the year of our Lord one thousand eight hundred and twenty one, and the legislature, within every subsequent period of at most ten years and at least five, cause the number of the inhabitants of the state to be ascertained, exclusive of foreigners not naturalized, and Indians not taxed. The number of representatives shall, at the several periods of making such enumeration, be fixed and apportioned among the several counties, as near as may be, according to the number of inhabitants, having regard to the relative increase of population. The number of representatives shall, on said first apportionment, be not less than one hundred nor more than one hundred and fifty; and, whenever the number of representatives shall be two hundred, at the next annual meetings of elections, which shall thereafter be had, and at every subsequent period of ten years, the people shall give in their votes, whether the number of representatives shall be increased or diminished, and if a majority of votes are in favor thereof, it shall be the duty of the next legislature thereafter to increase or diminish the number by the rule hereinafter prescribed.

House of representatives to consist of not less than 100, nor more than 200.

Number of inhabitants to be ascertained once in ten years at least. Representatives to be apportioned among the counties. 3 Greenl. 477.

SECT. 3. Each town having fifteen hundred inhabitants may elect one representative; each town having three thousand seven hundred and fifty may elect two; each town having six thousand seven hundred and fifty may elect three; each town having ten thousand five hundred may elect four; each town having fifteen thousand may elect five; each town having twenty thousand two hundred and fifty may elect six; each town having twenty-six thousand two hundred and fifty inhabitants may elect seven; but no town shall ever be entitled to more than seven representatives: and towns and plantations duly organized, not having fifteen hundred inhabitants, shall be classed, as conveniently as may be, into districts containing that number, and so as not to divide towns; and

Apportionment among towns. 6 Greenl. 486.

each such district may elect one representative ; and, when on this apportionment the number of representatives shall be two hundred, a different apportionment shall take place upon the above principle ; and, in case the fifteen hundred shall be too large or too small to apportion all the representatives to any county, it shall be so increased or diminished as to give the number of representatives according to the above rule and proportion ; and whenever any town or towns, plantation or plantations not entitled to elect a representative shall determine against a classification with any other town or plantation, the legislature may, at each apportionment of representatives, on the application of such town or plantation, authorize it to elect a representative for such portion of time and such periods, as shall be equal to its portion of representation ; and the right of representation, so established, shall not be altered until the next general apportionment.

Qualifications  
of a representa-  
tive.

SECT. 4. No person shall be a member of the house of representatives, unless he shall, at the commencement of the period for which he is elected, have been five years a citizen of the United States, have arrived at the age of twenty one years, have been a resident in this state one year, or from the adoption of this constitution ; and for the three months next preceding the time of his election shall have been, and, during the period for which he is elected, shall continue to be a resident in the town or district which he represents.

Meetings for  
choice of repre-  
sentatives. Sec  
amendments,  
art. 1.

7 Greenl. 497.

SECT. 5. The meetings for the choice of representatives shall be warned in due course of law by the selectmen of the several towns seven days at least before the election, and the selectmen thereof shall preside impartially at such meetings, receive the votes of all the qualified electors present, sort, count and declare them in open town meeting, and in the presence of the town clerk, who shall form a list of the persons voted for, with the number of votes for each person against his name, shall make a fair record thereof in the presence of the selectmen, and in open town meeting ; and a fair copy of this list shall be attested by the selectmen and town clerk, and delivered by said selectmen to each representative within ten days next after such election. And the towns and plantations organized by law, belonging to any class herein provided, shall hold their meetings at the same time in the respective towns and plantations ; and the town and plantation meetings in such towns and plantations shall be notified, held and regulated, the votes received, sorted, counted and declared in the same manner. And the assessors and clerks of plantations shall have all the powers, and be subject to all the duties, which selectmen and town clerks have, and are subject to by this constitution. And the selectmen of such

Meetings of  
classed towns.

towns, and the assessors of such plantations, so classed, shall, within four days next after such meeting, meet at some place, to be prescribed and notified by the selectmen or assessors of the eldest town, or plantation, in such class, and the copies of said lists shall be then examined and compared; and in case any person shall be elected by a majority of all the votes, the selectmen or assessors shall deliver the certified copies of such lists to the person so elected, within ten days next after such election; and the clerks of towns and plantations respectively shall seal up copies of all such lists and cause them to be delivered into the secretary's office twenty days at least before the first Wednesday in January annually; but in case no person shall have a majority of votes, the selectmen and assessors shall, as soon as may be, notify another meeting, and the same proceedings shall be had at every future meeting until an election shall have been effected: *provided*, that the legislature may by law prescribe a different mode of returning, examining and ascertaining the election of the representatives in such classes.

SECT. 6. Whenever the seat of a member shall be vacated by death, resignation, or otherwise the vacancy may be filled by a new election. Vacancies to be filled.

SECT. 7. The house of representatives shall choose their speaker, clerk and other officers. House to choose its officers.

SECT. 8. The house of representatives shall have the sole power of impeachment. Power of impeachment.

ARTICLE IV.—PART SECOND.

*Senate.*

SECT. 1. The senate shall consist of not less than twenty, nor more than thirty one members, elected at the same time, and for the same term, as the representatives, by the qualified electors of the districts, into which the state shall from time to time be divided. Senate to consist of not less than 20, nor more than 31. 7 Greenl. 489.

SECT. 2. The legislature, which shall be first convened under this constitution, shall, on or before the fifteenth day of August in the year of our Lord one thousand eight hundred and twenty-one, and the legislature at every subsequent period of ten years, cause the state to be divided into districts for the choice of senators. The districts shall conform, as near as may be, to county lines, and be apportioned according to the number of inhabitants. The number of senators shall not exceed twenty at the first apportionment, and shall at each apportionment be increased, until they shall amount to thirty one, according to the increase in the house of representatives. State to be districted once in ten years.

SECT. 3. The meetings for the election of senators shall be notified, held and regulated, and the votes received, sorted, counted, Meetings for choice of senators.

declared and recorded, in the same manner as those for representatives. And fair copies of the list of votes shall be attested by the selectmen and town clerks of towns, and the assessors and clerks of plantations, and sealed up in open town and plantation meetings; and the town and plantation clerks respectively shall cause the same to be delivered into the secretary's office thirty days at least before the first Wednesday of January. All other qualified electors, living in places unincorporated, who shall be assessed to the support of the government by the assessors of an adjacent town, shall have the privilege of voting for senators, representatives and governor in such town; and shall be notified by the selectmen thereof for that purpose accordingly.

Electors in unincorporated places.

Votes to be examined by the governor and council.

SECT. 4. The governor and council shall, as soon as may be, examine the returned copies of such lists, and, twenty days before the said first Wednesday of January, issue a summons to such persons, as shall appear to be elected by a majority of the votes in each district, to attend that day and take their seats.

Senate to decide as to the election of its members.

SECT. 5. The senate shall, on the said first Wednesday of January, annually, determine who are elected by a majority of votes to be senators in each district; and in case the full number of senators to be elected from each district shall not have been so elected, the members of the house of representatives and such senators, as shall have been elected, shall, from the highest numbers of the persons voted for, on said lists, equal to twice the number of senators deficient, in every district, if there be so many voted for, elect by joint ballot the number of senators required; and in this manner all vacancies in the senate shall be supplied as soon as may be, after such vacancies happen.

Vacancies how supplied.  
6 Greenl. 514.  
7 Greenl. 489.

Qualifications of senators.

SECT. 6. The senators shall be twenty five years of age at the commencement of the term, for which they are elected, and in all other respects their qualifications shall be the same, as those of the representatives.

Senate to try impeachments.

SECT. 7. The senate shall have full power to try all impeachments, and when sitting for that purpose shall be on oath or affirmation, and no person shall be convicted without the concurrence of two thirds of the members present. Their judgment, however, shall not extend farther than to removal from office, and disqualification to hold or enjoy any office of honor, trust or profit under this state. But the party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

Party liable to be tried and punished.

Senate to choose its officers.

SECT. 8. The senate shall choose their president, secretary and other officers.

ARTICLE IV.—PART THIRD.

*Legislative power.*

**SECT. 1.** The legislature shall convene on the first Wednesday of January annually, and shall have full power to make and establish all reasonable laws and regulations for the defence and benefit of the people of this state, not repugnant to this constitution, nor to that of the United States.

Legislature to meet annually. Its powers. 6 Greenl. 412. 9 Greenl. 51.

**SECT. 2.** Every bill or resolution, having the force of law, to which the concurrence of both houses may be necessary, except on a question of adjournment, which shall have passed both houses, shall be presented to the governor, and if he approve, he shall sign it; if not, he shall return it with his objections to the house, in which it shall have originated, which shall enter the objections at large on its journals, and proceed to reconsider it. If after such reconsideration, two thirds of that house shall agree to pass it, it shall be sent together with the objections, to the other house, by which it shall be reconsidered, and, if approved by two thirds of that house, it shall have the same effect, as if it had been signed by the governor: but in all such cases, the votes of both houses shall be taken by yeas and nays, and the names of the persons, voting for and against the bill or resolution, shall be entered on the journals of both houses respectively. If the bill or resolution shall not be returned by the governor within five days (Sundays excepted) after it shall have been presented to him, it shall have the same force and effect, as if he had signed it, unless the legislature by their adjournment prevent its return, in which case it shall have such force and effect, unless returned within three days after their next meeting.

Acts to be signed by the governor.

Proceedings in case he disapprove.

Bills to be returned by him in five days.

**SECT. 3.** Each house shall be the judge of the elections and qualifications of its own members, and a majority shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each house shall provide.

Each house to judge of elections. Majority a quorum.

**SECT. 4.** Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member, but not a second time for the same cause.

May punish and expel members.

**SECT. 5.** Each house shall keep a journal, and from time to time publish its proceedings, except such parts as in their judgment may require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one fifth of those present, be entered on the journals.

To keep a journal.

Yeas and nays.



May punish for contempt.

SECT. 6. Each house, during its session, may punish by imprisonment, any person not a member, for disrespectful or disorderly behavior in its presence, for obstructing any of its proceedings, threatening, assaulting or abusing any of its members for any thing said, done, or doing in either house : *provided*, that no imprisonment shall extend beyond the period of the same session.

Compensation of members.

SECT. 7. The senators and representatives shall receive such compensation, as shall be established by law ; but no law increasing their compensation shall take effect during the existence of the legislature, which enacted it. The expenses of the members of the house of representatives in travelling to the legislature, and returning therefrom, once in each session and no more, shall be paid by the state out of the public treasury to every member, who shall seasonably attend, in the judgment of the house, and does not depart therefrom without leave.

Travelling expenses.

Members exempted from arrest.

SECT. 8. The senators and representatives shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at, going to, and returning from each session of the legislature, and no member shall be liable to answer for any thing spoken in debate in either house, in any court or place elsewhere.

Freedom of debate.

Either house may originate bills.

SECT. 9. Bills, orders or resolutions, may originate in either house, and may be altered, amended or rejected in the other ; but all bills for raising a revenue shall originate in the house of representatives, but the senate may propose amendments as in other cases : *provided*, that they shall not, under color of amendment introduce any new matter, which does not relate to raising a revenue.

Exceptions ; money bills.

Members not to be appointed to certain offices. 3 Greenl. 481.

SECT. 10. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which increased during such term, except such offices as may be filled by elections by the people : *provided* that this prohibition shall not extend to the members of the first legislature.

Proviso.

Persons disqualified to be members.

SECT. 11. No member of congress, nor person holding any office under the United States (post officers excepted) nor office of profit under this state, justices of the peace, notaries public, coroners and officers of the militia excepted, shall have a seat in either house during his being such member of congress, or his continuing in such office.

Adjournments.

SECT. 12. Neither house shall during the session, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the houses shall be sitting.

ARTICLE V.—PART FIRST.

EXECUTIVE POWER.

SECT. 1. The supreme executive power of this state shall be vested in a governor.

Governor.

SECT. 2. The governor shall be elected by the qualified electors, and shall hold his office one year from the first Wednesday of January in each year.

Elected for one year.

SECT. 3. The meetings for election of governor shall be notified, held and regulated, and votes shall be received, sorted, counted, declared and recorded, in the same manner as those for senators and representatives. They shall be sealed and returned into the secretary's office in the same manner, and at the same time, as those for senators. And the secretary of state for the time being, shall, on the first Wednesday of January, then next, lay the lists before the senate and house of representatives to be by them examined, and, in case of a choice by a majority of all the votes returned, they shall declare and publish the same. But, if no person shall have a majority of votes, the house of representatives shall, by ballot, from the persons having the four highest numbers of votes on the lists, if so many there be, elect two persons, and make return of their names to the senate, of whom the senate shall, by ballot, elect one, who shall be declared the governor.

Meetings for choice of governor.

Votes to be returned to secretary of state.

Provision in case there is no choice.

SECT. 4. The governor shall, at the commencement of his term, be not less than thirty years of age; a natural born citizen of the United States, have been five years, or from the adoption of this constitution, a resident of the state; and at the time of his election and during the term for which he is elected, be a resident of said state.

Qualifications of governor.

SECT. 5. No person holding any office or place under the United States, this state, or any other power, shall exercise the office of governor.

Disqualifications.

SECT. 6. The governor shall, at stated times, receive for his services a compensation, which shall not be increased or diminished during his continuance in office.

Compensation

SECT. 7. He shall be commander in chief of the army and navy of the state, and of the militia, except when called into the actual service of the United States; but he shall not march nor convey any of the citizens out of the state without their consent or that of the legislature, unless it shall become necessary, in order to march or transport them from one part of the state to another for the defence thereof.

Commander-in-chief of the militia.

Not to march the militia out of the state.

SECT. 8. He shall nominate, and, with the advice and consent of the council, appoint all judicial officers, the attorney general, the

With advice of the council to appoint officers.

sheriffs, coroners, registers of probate, and notaries public ; and he shall also nominate, and with the advice and consent of the council appoint all other civil and military officers, whose appointment is not by this constitution, or shall not by law be otherwise provided for ; and every such nomination shall be made seven days, at least, prior to such appointment.

To communi-  
cate informa-  
tion to the leg-  
islature.

**SECT. 9.** He shall from time to time give the legislature information of the condition of the state, and recommend to their consideration such measures, as he may judge expedient.

May require in-  
formation of  
any officer.

**SECT. 10.** He may require information from any military officer, or any officer in the executive department, upon any subject relating to the duties of their respective offices.

May remit pen-  
alties and grant  
pardons.

**SECT. 11.** He shall have power, with the advice and consent of the council, to remit, after conviction, all forfeitures and penalties, and to grant reprieves and pardons, except in cases of impeachment.

To enforce the  
laws.

**SECT. 12.** He shall take care that the laws be faithfully executed.

To convene the  
legislature on  
extraordinary  
occasions, and  
adjourn it in  
case of disa-  
greement.

**SECT. 13.** He may, on extraordinary occasions, convene the legislature ; and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time, as he shall think proper, not beyond the day of the next annual meeting ; and if, since the last adjournment, the place where the legislature were next to convene shall have become dangerous from an enemy or contagious sickness, may direct the session to be held at some other convenient place within the state.

Vacancy how  
supplied.  
6 Greenl. 506.

**SECT. 14.** Whenever the office of governor shall become vacant by death, resignation, removal from office or otherwise, the president of the senate shall exercise the office of governor until another governor shall be duly qualified ; and in case of the death, resignation, removal from office or other disqualification of the president of the senate, so exercising the office of governor, the speaker of the house of representatives shall exercise the office, until a president of the senate shall have been chosen ; and when the office of governor, president of the senate, and speaker of the house shall become vacant, in the recess of the senate, the person, acting as secretary of state for the time being, shall by proclamation convene the senate, that a president may be chosen to exercise the office of governor. And whenever either the president of the senate, or speaker of the house shall so exercise said office, he shall receive only the compensation of governor, but his duties as president or speaker shall be suspended ; and the senate or house, shall fill the vacancy, until his duties as governor shall cease.

7 Greenl. 489

ARTICLE V.—PART SECOND.

*Council.*

SECT. 1. There shall be a council, to consist of seven persons, citizens of the United States, and residents of this state, to advise the governor in the executive part of government, whom the governor shall have full power, at his discretion, to assemble; and he with the counsellors, or a majority of them may from time to time, hold and keep a council, for ordering and directing the affairs of state according to law.

Council to consist of seven.

SECT. 2. The counsellors shall be chosen annually, on the first Wednesday of January, by joint ballot of the senators and representatives in convention; and vacancies, which shall afterwards happen, shall be filled in the same manner; but not more than one counsellor shall be elected from any district, prescribed for the election of senators; and they shall be privileged from arrest in the same manner as senators and representatives.

Counsellors how chosen.

SECT. 3. The resolutions and advice of council shall be recorded in a register, and signed by the members agreeing thereto, which may be called for by either house of the legislature; and any counsellor may enter his dissent to the resolution of the majority.

Journal to be kept of their proceedings.

SECT. 4. No member of congress, or of the legislature of this state, nor any person holding any office under the United States, (post officers excepted) nor any civil officers under this state, (justices of the peace and notaries public excepted) shall be counsellors. And no counsellor shall be appointed to any office during the time for which he shall have been elected.

Persons disqualified to be counsellors.

Not to be appointed to any office.

ARTICLE V.—PART THIRD.

*Secretary.*

SECT. 1. The secretary of state shall be chosen annually at the first session of the legislature, by joint ballot of the senators and representatives in convention.

Secretary how chosen.

SECT. 2. The records of the state shall be kept in the office of the secretary, who may appoint his deputies, for whose conduct he shall be accountable.

To keep the records of the state.

SECT. 3. He shall attend the governor and council, senate and house of representatives, in person or by his deputies as they shall respectively require.

To attend the governor and council.

SECT. 4. He shall carefully keep and preserve the records of all the official acts and proceedings of the governor and council, senate and house of representatives, and, when required, lay the same before either branch of the legislature, and perform such other duties as are enjoined by this constitution, or shall be required by law.

To preserve the records of the executive and legislative departments.

## ARTICLE V.—PART FOURTH.

*Treasurer.*

Treasurer how chosen: ineligible for more than five years in succession.

SECT. 1. The treasurer shall be chosen annually, at the first session of the legislature, by joint ballot of the senators, and representatives in convention, but shall not be eligible more than five years successively.

To give bond.

SECT. 2. The treasurer shall, before entering on the duties of his office, give bond to the state with sureties, to the satisfaction of the legislature, for the faithful discharge of his trust.

Not to engage in trade, &c.

SECT. 3. The treasurer shall not, during his continuance in office, engage in any business of trade or commerce, or as a broker, nor as an agent or factor for any merchant or trader.

No money to be drawn but by warrant.

SECT. 4. No money shall be drawn from the treasury, but by warrant from the governor and council, and in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money, shall be published at the commencement of the annual session of the legislature.

## ARTICLE VI.

## JUDICIAL POWER.

Supreme and other courts. 3 Greenl. 326. 4 Greenl. 140.

SECT. 1. The judicial power of this state shall be vested in a supreme judicial court, and such other courts as the legislature shall from time to time establish.

Compensation of justices of S. J. C.

SECT. 2. The justices of the supreme judicial court shall, at stated times receive a compensation, which shall not be diminished during their continuance in office, but they shall receive no other fee or reward.

To give their opinions when required by either branch of the government.

SECT. 3. They shall be obliged to give their opinions upon important questions of law, and upon solemn occasions, when required by the governor, council, senate or house of representatives.

Tenure of judicial offices. See amendments, art. iii.

SECT. 4. *All judicial officers, except justices of the peace, shall hold their offices during good behavior, but not beyond the age of seventy years.*

Justices of the peace and notaries.

SECT. 5. Justices of the peace and notaries public, shall hold their offices during seven years, if they so long behave themselves well, at the expiration of which term, they may be reappointed or others appointed, as the public interest may require.

Justices of the supreme judicial court to hold no other office.

SECT. 6. The justices of the supreme judicial court shall hold no office under the United States, nor any state, nor any other office under this state, except that of justice of the peace.

ARTICLE VII.

MILITARY.

SECT. 1. The captains and subalterns of the militia shall be elected by the written votes of the members of their respective companies. The field officers of regiments by the written votes of the captains and subalterns of their respective regiments. The brigadier generals in like manner, by the field officers of their respective brigades.

Officers, by whom elected.

SECT. 2. The legislature shall, by law, direct the manner of notifying the electors, conducting the elections, and making returns to the governor of the officers elected; and, if the electors shall neglect or refuse to make such elections, after being duly notified according to law, the governor shall appoint suitable persons to fill such offices.

Manner of conducting elections.

SECT. 3. The major generals shall be elected by the senate and house of representatives, each having a negative on the other. The adjutant general and quarter-master general shall be appointed by the governor and council; but the adjutant general shall perform the duties of quarter-master general, until otherwise directed by law. The major generals and brigadier generals, and the commanding officers of regiments and battalions shall appoint their respective staff officers; and all military officers shall be commissioned by the governor.

Major generals.

Adjutant general.

Staff officers. 2 Greenl. 431.

SECT. 4. The militia, as divided into divisions, brigades, regiments, battalions and companies pursuant to the laws now in force, shall remain so organized, until the same shall be altered by the legislature.

Organization of the militia.

SECT. 5. Persons of the denominations of quakers and shakers, justices of the supreme judicial court and ministers of the gospel may be exempted from military duty, but no other person of the age of eighteen and under the age of forty five years, excepting officers of the militia, who have been honorably discharged, shall be so exempted, unless he shall pay an equivalent to be fixed by law.

Who may be exempted from military duty.

ARTICLE VIII.

LITERATURE.

A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools; and it shall further be their duty to encourage and

Legislature to require of towns to support public schools.

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Legislature to require of towns to support public schools.



Shall endow colleges and academies.

Proviso.

suitably endow, from time to time, as the circumstances of the people may authorize, all academies, colleges and seminaries of learning within the state: *provided*, that no donation, grant or endowment shall at any time be made by the legislature to any literary institution now established, or which may hereafter be established, unless, at the time of making such endowment, the legislature of the state shall have the right to grant any further powers to, alter, limit or restrain any of the powers vested in, any such literary institution, as shall be judged necessary to promote the best interests thereof.

## ARTICLE IX.

### GENERAL PROVISIONS.

Oaths and subscriptions.

3 Greenl. 372.

SECT. 1. Every person elected or appointed to either of the places or offices provided in this constitution, and every person elected, appointed, or commissioned to any judicial, executive, military or other office under this state, shall, before he enter on the discharge of the duties of his place or office, take and subscribe the following oath or affirmation: "I do swear, that I will support the constitution of the United States and of this state, so long as I shall continue a citizen thereof. So help me God."

"I do swear, that I will faithfully discharge, to the best of my abilities, the duties incumbent on me as according to the constitution and the laws of the state. So help me God." *Provided*, that an affirmation in the above forms may be substituted, when the person shall be conscientiously scrupulous of taking and subscribing an oath.

Before whom to be taken.

The oaths or affirmations shall be taken and subscribed by the governor and counsellors before the presiding officer of the senate, in the presence of both houses of the legislature, and by the senators and representatives before the governor and council, and by the residue of said officers before such persons as shall be prescribed by the legislature; and whenever the governor or any counsellor shall not be able to attend during the session of the legislature to take and subscribe said oaths or affirmations, such oaths or affirmations may be taken and subscribed in the recess of the legislature before any justice of the supreme judicial court: *provided*, that the senators and representatives, first elected under this constitution, shall take and subscribe such oaths or affirmations before the president of the convention.

Offices that are incompatible with each other.

SECT. 2. No person holding the office of justice of the supreme judicial court, or of any inferior court, attorney general, county attorney, treasurer of the state, adjutant general, judge of probate,

register of probate, register of deeds, sheriffs or their deputies, clerks of the judicial courts, shall be a member of the legislature; and any person holding either of the foregoing offices, elected to, and accepting a seat in the congress of the United States, shall thereby vacate said office; and no person shall be capable of holding or exercising at the same time within this state, more than one of the offices before mentioned.

**SECT. 3.** All commissions shall be in the name of the state, signed by the governor, attested by the secretary or his deputy, and have the seal of the state thereto affixed. Commissions.

**SECT. 4.** And in case the elections, required by this constitution on the first Wednesday of January annually, by the two houses of the legislature, shall not be completed on that day, the same may be adjourned from day to day, until completed, in the following order: the vacancies in the senate shall first be filled; the governor shall then be elected, if there be no choice by the people; and afterwards the two houses shall elect the council. Elections on the first Wednesday of January may be adjourned from day to day.

**SECT. 5.** Every person holding any civil office under this state, may be removed by impeachment, for misdemeanor in office; and every person holding any office, may be removed by the governor, with the advice of the council, on the address of both branches of the legislature. But before such address shall pass either house, the causes of removal shall be stated and entered on the journal of the house in which it originated, and a copy thereof served on the person in office, that he may be admitted to a hearing in his defence. Every civil officer may be removed by impeachment or address.

**SECT. 6.** The tenure of all offices, which are not or shall not be otherwise provided for, shall be during the pleasure of the governor and council. Tenure of office.

**SECT. 7.** While the public expenses shall be assessed on polls and estates, a general valuation shall be taken at least once in ten years. Valuation.

**SECT. 8.** All taxes upon real estate, assessed by authority of this state, shall be apportioned and assessed equally, according to the just value thereof. Real estate to be taxed according to its value.

## ARTICLE X.

### SCHEDULE.

**SECT. 1.** The first legislature shall meet on the last Wednesday in May next. The elections on the second Monday in September annually shall not commence until the year one thousand eight hundred and twenty one, and in the mean time the election for governor, senators and representatives shall be on the first Monday in April, in the year of our Lord one thousand eight hundred and Meeting of the first legislature. Elections for 1820.

twenty, and at this election the same proceedings shall be had as are required at the elections, provided for in this constitution on the second Monday in September annually, and the lists of the votes for the governor and senators shall be transmitted, by the town and plantation clerks respectively, to the secretary of state *pro tempore*, seventeen days at least before the last Wednesday in May next, and the president of the convention shall, in presence of the secretary of state *pro tempore*, open and examine the attested copies of said lists so returned for senators, and shall have all the powers, and be subject to all the duties, in ascertaining, notifying, and summoning the senators, who appear to be elected, as the governor and council have, and are subject to, by this constitution: *provided*, he shall notify said senators fourteen days at least before the last Wednesday in May, and vacancies shall be ascertained and filled in the manner herein provided: and the senators to be elected on the said first Monday of April, shall be apportioned as follows:

Senators apportioned.

The county of York shall elect three.

The county of Cumberland shall elect three.

The county of Lincoln shall elect three.

The county of Hancock shall elect two.

The county of Washington shall elect one.

The county of Kennebec shall elect three.

The county of Oxford shall elect two.

The county of Somerset shall elect two.

The county of Penobscot shall elect one.

Representatives apportioned.

And the members of the house of representatives shall be elected, ascertained, and returned in the same manner as herein provided at elections on the second Monday of September, and the first house of representatives shall consist of the following number, to be elected as follows:

York.

COUNTY OF YORK. The towns of York and Wells may each elect two representatives; and each of the remaining towns may elect one.

Cumberland.

COUNTY OF CUMBERLAND. The town of Portland may elect three representatives; North Yarmouth, two; Brunswick, two; Gorham, two; Freeport and Pownal, two; Raymond and Otisfield, one; Bridgton, Baldwin and Harrison, one; Poland and Danville, one; and each remaining town one.

Lincoln.

COUNTY OF LINCOLN. The towns of Georgetown and Phippsburg, may elect one representative; Lewiston and Wales, one; St. George, Cushing and Friendship, one; Hope and Appleton Ridge, one; Jefferson, Putnam and Patricktown plantation, one; Alna and Whitefield, one; Montville, Palermo and Montville plantation, one; Woolwich and Dresden, one; and each remaining town one.

**COUNTY OF HANCOCK.** The town of Bucksport may elect one Hancock. representative; Deer Island, one; Castine and Brooksville, one; Orland and Penobscot, one; Mt. Desert and Eden, one; Vinalhaven and Islesborough, one; Sedgwick and Bluehill, one; Gouldsborough, Sullivan and plantations No. 8 and 9 north of Sullivan, one; Surry, Ellsworth, Trenton and plantation of Mariaville, one; Lincolnville, Searsmont and Belmont, one; Belfast and Northport, one; Prospect and Swanville, one; Frankfort and Monroe, one; Knox, Brooks, Jackson and Thorndike, one.

**COUNTY OF WASHINGTON.** The towns of Steuben, Cherryfield Washington. and Harrington, may elect one representative; Addison, Columbia and Jonesborough, one; Machias, one; Lubec, Dennysville, plantations No. 9, No. 10, No. 11, No. 12, one; Eastport, one; Perry, Robbinston, Calais, plantations No. 3, No. 6, No. 7, No. 15, and No. 16, one.

**COUNTY OF KENNEBEC.** The towns of Belgrade and Dearborn Kennebec. may elect one representative; Chesterville, Vienna and Rome, one; Wayne and Fayette, one; Temple and Wilton, one; Winslow and China, one; Fairfax and Freedom, one; Unity, Joy and twenty five mile pond plantation, one; Harlem and Malta, one; and each remaining town one.

**COUNTY OF OXFORD.** The towns of Dixfield, Mexico, Weld Oxford. and plantations No. 1 and 4, may elect one representative; Jay and Hartford, one; Livermore, one; Rumford, East Andover and plantations Nos. 7 and 8, one; Turner, one; Woodstock, Paris and Greenwood, one; Hebron and Norway, one; Gilead, Bethel, Newry, Albany and Howard's Gore, one; Porter, Hiram and Brownfield, one; Waterford, Sweden and Lovell, one; Denmark, Fryeburg, and Fryeburg addition, one; Buckfield and Sumner, one.

**COUNTY OF SOMERSET.** The town of Fairfield may elect one Somerset. representative; Norridgewock and Bloomfield, one; Starks and Mercer, one; Industry, Strong and New Vineyard, one; Avon, Phillips, Freeman and Kingfield, one; Anson, New Portland, Embden and plantation No. 1, one; Canaan, Warsaw, Palmyra, St. Albans and Corinna, one; Madison, Solon, Bingham, Moscow and Northhill, one; Cornville, Athens, Harmony, Ripley and Warrenstown, one.

**COUNTY OF PENOBSCOT.** The towns of Hampden and Newburg Penobscot. may elect one representative; Orrington, Brewer and Eddington and plantations adjacent on the east side of Penobscot river, one; Bangor, Orono and Sunkhaze plantation, one; Dixmont, Newport, Carmel, Hermon, Stetson, and plantation No. 4, in the 6th range, one; Levant, Corinth, Exeter, New Charlestown, Blakesburg, plantation No. 1 in 3d range, and plantation No. 1 in 4th range.

one ; Dexter, Garland, Guilford, Sangerville, and plantation No. 3, in sixth range, one ; Atkinson, Sebec, Foxcroft, Brownville, Williamsburg, plantation No. 1, in 7th range, and plantation No. 3, in 7th range, one.

Powers and duties of secretary of state *pro tem.* in relation to the votes.

And the secretary of state *pro tempore* shall have the same powers, and be subject to the same duties, in relation to the votes for governor, as the secretary of state has, and is subject to, by this constitution ; and the election of governor shall, on the said last Wednesday in May, be determined and declared, in the same manner, as other elections of governor are by this constitution ; and in case of vacancy in said office, the president of the senate, and speaker of the house of representatives, shall exercise the office, as herein otherwise provided, and the counsellors, secretary and treasurer, shall also be elected on said day, and have the same powers, and be subject to the same duties, as is provided in this constitution ; and in case of the death or other disqualification of the president of this convention, or of the secretary of state *pro tempore*, before the election and qualification of the governor or secretary of state under this constitution, the persons to be designated by this convention at their session in January next, shall have all the powers and perform all the duties, which the president of this convention, or the secretary *pro tempore*, to be by them appointed, shall have and perform.

Duration of the first legislature.

SECT. 2. The period for which the governor, senators and representatives, counsellors, secretary and treasurer, first elected or appointed, are to serve in their respective offices and places, shall commence on the last Wednesday in May, in the year of our Lord one thousand eight hundred and twenty, and continue until the first Wednesday of January, in the year of our Lord one thousand eight hundred and twenty two.

Laws now in force continue until repealed.

SECT. 3. All laws now in force in this state, and not repugnant to this constitution, shall remain, and be in force, until altered or repealed by the legislature, or shall expire by their own limitation.

Constitution how to be amended.

SECT. 4. The legislature, whenever two thirds of both houses shall deem it necessary, may propose amendments to this constitution ; and when any amendments shall be so agreed upon, a resolution shall be passed and sent to the selectmen of the several towns, and the assessors of the several plantations, empowering and directing them to notify the inhabitants of their respective towns and plantations, in the manner prescribed by law, at their next annual meetings in the month of September, to give in their votes on the question, whether such amendment shall be made ; and if it shall appear that a majority of the inhabitants voting on the question are in favor of such amendment, it shall become a part of this constitution.

SECT. 5. All officers provided for in the sixth section of an act of the Commonwealth of Massachusetts, passed on the nineteenth day of June, in the year of our Lord one thousand eight hundred and nineteen, entitled "an act relating to the separation of the district of Maine from Massachusetts proper, and forming the same into a separate and independent state," shall continue in office as therein provided; and the following provisions of said act shall be a part of this constitution, subject however to be modified or annulled as therein prescribed, and not otherwise, to wit:

Persons in office to continue to hold their offices.

"Sect. 1. Whereas it has been represented to this legislature, that a majority of the people of the district of Maine are desirous of establishing a separate and independent government within said district: therefore,

Part of a law of Massachusetts made a part of the constitution.

*"Be it enacted by the senate and house of representatives in general court assembled, and by the authority of the same, That the consent of this commonwealth be, and the same is hereby given, that the district of Maine may be formed and erected into a separate and independent state, if the people of the said district shall in the manner, and by the majority hereinafter mentioned, express their consent and agreement thereto, upon the following terms and conditions: and provided the congress of the United States shall give its consent thereto, before the fourth day of March next: which terms and conditions are as follows, viz.*

*"First. All the lands and buildings belonging to the commonwealth, within Massachusetts proper, shall continue to belong to said commonwealth, and all the lands belonging to the commonwealth, within the district of Maine, shall belong, the one half thereof to the said commonwealth, and the other half thereof, to the state to be formed within the said district, to be divided as is hereinafter mentioned; and the lands within the said district, which shall belong to the said commonwealth, shall be free from taxation, while the title to the said lands remains in the commonwealth; and the rights of the commonwealth to their lands, within said district, and the remedies for the recovery thereof, shall continue the same, within the proposed state, and in the courts thereof, as they now are within the said commonwealth, and in the courts thereof; for which purposes, and for the maintenance of its rights, and recovery of its lands, the said commonwealth shall be entitled to all other proper and legal remedies, and may appear in the courts of the proposed state and in the courts of the United States, holden therein; and all rights of action for, or entry into lands, and of actions upon bonds, for the breach of the performance of the condition of settling duties, so called, which have accrued, or may accrue, shall remain in this commonwealth, to be enforced, commuted, released, or oth-*

9 Greenl. 83.

erwise disposed of, in such manner as this commonwealth may hereafter determine: *provided however*, that whatever this commonwealth may hereafter receive or obtain on account thereof if any thing, shall, after deducting all reasonable charges relating thereto, be divided, one third part thereof to the new state, and two third parts thereof to this commonwealth.

“*Second.* All the arms which have been received by this commonwealth from the United States, under the law of congress, entitled, “an act making provisions for arming and equipping the whole body of militia of the United States,” passed April the twenty third, one thousand eight hundred and eight, shall, as soon as the said district shall become a separate state, be divided between the two states, in proportion to the returns of the militia, according to which, the said arms have been received from the United States, as aforesaid.

“*Third.* All money, stock or other proceeds, hereafter derived from the United States, on account of the claim of this commonwealth, for disbursements made, and expenses incurred, for the defence of the state, during the late war with Great Britain, shall be received by this commonwealth, and when received, shall be divided between the two states, in the proportion of two thirds to this commonwealth, and one third to the new state.

“*Fourth.* All other property, of every description, belonging to the commonwealth, shall be holden and receivable by the same as a fund and security, for all debts, annuities, and Indian subsidies, or claims due by said commonwealth; and within two years after the said district shall have become a separate state, the commissioners to be appointed, as hereinafter provided, if the said states cannot otherwise agree, shall assign a just portion of the productive property, so held by said commonwealth, as an equivalent and indemnification to said commonwealth, for all such debts, annuities, or Indian subsidies or claims, which may then remain due, or unsatisfied: and all the surplus of the said property, so holden as aforesaid, shall be divided between the said commonwealth and the said district of Maine, in the proportion of two thirds to the said commonwealth, and one third to the said district—and if, in the judgment of the said commissioners, the whole of said property, so held, as a fund and security, shall not be sufficient indemnification for the purpose, the said district shall be liable for and shall pay to said commonwealth one third of the deficiency.

“*Fifth.* The new state shall, as soon as the necessary arrangements can be made for that purpose, assume and perform all the duties and obligations of this commonwealth, towards the Indians within said district of Maine, whether the same arise from treaties,

or otherwise ; and for this purpose shall obtain the assent of said Indians, and their release to this commonwealth of claims and stipulations arising under the treaty at present existing between the said commonwealth and said Indians ; and as an indemnification to such new state, therefor, this commonwealth when such arrangements shall be completed, and the said duties and obligations assumed, shall pay to said new state, the value of thirty thousand dollars, in manner following, viz : the said commissioners shall set off by metes and bounds, so much of any part of the land within the said district, falling to this commonwealth, in the division of the public lands, hereinafter provided for, as in their estimation shall be of the value of thirty thousand dollars ; and this commonwealth shall, thereupon, assign the same to the said new state, or in lieu thereof, may pay the sum of thirty thousand dollars at its election ; which election of the said commonwealth, shall be made within one year from the time that notice of the doings of the commissioners, on this subject, shall be made known to the governor and council ; and if not made within that time, the election shall be with the new state.

*Sixth.* Commissioners, with the powers and for the purposes mentioned in this act, shall be appointed in manner following : the executive authority of each state shall appoint two ; and the four so appointed or the major part of them, shall appoint two more : but if they cannot agree in the appointment, the executive of each state shall appoint one in addition ; not however, in that case, to be a citizen of its own state. And any vacancy happening with respect to the commissioners shall be supplied in the manner provided for their original appointment ; and, in addition to the powers herein before given to said commissioners, they shall have full power and authority to divide all the public lands within the district, between the respective states, in equal shares, or moieties, in severalty, having regard to quantity, situation and quality ; they shall determine what lands shall be surveyed and divided, from time to time, the expense of which surveys, and of the commissioners, shall be borne equally by the two states. They shall keep fair records of their doings, and of the surveys made by their direction, copies of which records, authenticated by them, shall be deposited from time to time in the archives of the respective states ; transcripts of which, properly certified, may be admitted in evidence, in all questions touching the subject to which they relate. The executive authority of each state may revoke the power of either or both its commissioners : having, however, first appointed a substitute, or substitutes, and may fill any vacancy happening with respect to its own commissioners ; four of said commissioners shall constitute a quorum, for the transaction of business ; their decision shall be final



upon all subjects within their cognizance. In case said commission shall expire, the same not having been completed, and either state shall request the renewal or filling up of the same, it shall be renewed or filled up in the same manner, as is herein provided for filling the same, in the first instance, and with the like powers; and if either state shall, after six months' notice, neglect or refuse to appoint its commissioners, the other may fill up the whole commission.

6 Greenl. 175.

*“Seventh.* All grants of land, franchises, immunities, corporate or other rights, and all contracts for, or grants of land not yet located, which have been or may be made by the said commonwealth, before the separation of said district shall take place, and having or to have effect within the said district, shall continue in full force, after the said district shall become a separate state. But the grant which has been made to the president and trustees of Bowdoin college, out of the tax laid upon the banks within this commonwealth, shall be charged upon the tax upon the banks within the said district of Maine, and paid according to the terms of said grant; and the president and trustees, and the overseers of said college, shall have, hold and enjoy their powers and privileges in all respects; so that the same shall not be subject to be altered, limited, annulled or restrained except by judicial process, according to the principles of law; and in all grants hereafter to be made, by either state, of unlocated land within the said district, the same reservations shall be made for the benefit of schools and of the ministry, as have heretofore been usual, in grants made by this commonwealth. And all lands heretofore granted by this commonwealth, to any religious, literary, or eleemosynary corporation, or society, shall be free from taxation, while the same continues to be owned by such corporation, or society.

4 Greenl. 121.

*“Eighth.* No laws shall be passed in the proposed state, with regard to taxes, actions, or remedies at law, or bars or limitations thereof, or otherwise making any distinction between the lands and rights of property of proprietors, not resident in, or not citizens of said proposed state, and the lands and rights of property of the citizens of the proposed state, resident therein; and the rights and liabilities of all persons, shall, after the said separation, continue the same as if the said district was still a part of this commonwealth, in all suits pending, or judgments remaining unsatisfied on the fifteenth day of March next, where the suits have been commenced in Massachusetts proper, and process has been served within the district of Maine; or commenced in the district of Maine, and process has been served in Massachusetts proper, either by taking bail, making attachments, arresting and detaining persons, or otherwise, where execution remains to be done; and in such suits the courts within

Massachusetts proper, and within the proposed state, shall continue to have the same jurisdiction as if the said district had still remained a part of the commonwealth. And this commonwealth shall have the same remedies within the proposed state, as it now has, for the collection of all taxes, bonds or debts, which may be assessed, due, made, or contracted, by, to, or with the commonwealth, on or before the said fifteenth day of March, within the said district of Maine; and all officers within Massachusetts proper and the district of Maine, shall conduct themselves accordingly.

“*Ninth.* These terms and conditions, as here set forth, when the said district shall become a separate and independent state, shall, *ipso facto* be incorporated into, and become and be a part of any constitution, provisional or other, under which the government of the said proposed state, shall, at any time hereafter, be administered; 1 Sumn. 276. subject however, to be modified, or annulled, by the agreement of the legislature of both the said states; but by no other power or body whatsoever.”

SECT. 6. This constitution shall be enrolled on parchment, deposited in the secretary's office, and be the supreme law of the state, and printed copies thereof shall be prefixed to the books containing the laws of this state. Constitution to be enrolled on parchment.

AMENDMENTS,

*To the constitution of Maine, adopted in pursuance of the fourth section of the tenth article of the original constitution.*

ARTICLE I.

The electors resident in any city may, at any meeting duly notified for the choice of representatives, vote for such representatives in their respective ward meetings, and the wardens in said wards shall preside impartially at such meetings, receive the votes of all qualified electors present, sort, count and declare them in open ward meetings, and in the presence of the ward clerk, who shall form a list of the persons voted for, with the number of votes for each person against his name, shall make a fair record thereof in the presence of the warden, and in open ward meeting; and a fair copy of this list shall be attested by the warden and ward clerk, sealed up in open ward meeting, and delivered to the city clerk within twenty four hours after the close of the polls. And the aldermen of any city shall be in session at their usual place of meeting, within twenty four hours after any election, and in the presence of the city clerk shall examine and compare the copies of said lists, and

Manner of electing representatives and other civil officers in cities. Adopted in pursuance of a resolve of March 7, 1834.

in case any person shall have received a majority of all the votes, he shall be declared elected by the aldermen, and the city clerk of any city shall make a record thereof, and the aldermen and city clerk shall deliver certified copies of such lists to the person or persons so elected, within ten days after the election. And the electors resident in any city may at any meetings duly notified and holden for the choice of any other civil officers, for whom they have been required heretofore to vote in town meeting, vote for such officers in their respective wards, and the same proceedings shall be had by the warden and ward clerk in each ward, as in the case of votes for representatives. And the aldermen of any city shall be in session within twenty four hours after the close of the polls in such meetings, and in the presence of the city clerk shall open, examine and compare the copies from the lists of votes given in the several wards, of which the city clerk shall make a record, and return thereof shall be made into the secretary of state's office in the same manner as selectmen of towns are required to do.

## ARTICLE II.

Bailable offences. Adopted in pursuance of a resolve of March 30, 1837, as a substitute for the first clause of art. i, sect. 10.

No person before conviction shall be bailable for any of the crimes, which now are, or have been denominated capital offences since the adoption of the constitution, where the proof is evident or the presumption great, whatever the punishment of the crimes may be.

## ARTICLE III.

Tenure of judicial offices. Adopted in pursuance of a resolve of March 14, 1839, as a substitute for art. vi, sect. 4.

All judicial officers now in office or who may be hereafter appointed shall, from and after the first day of March in the year eighteen hundred and forty, hold their offices for the term of seven years from the time of their respective appointments (unless sooner removed by impeachment or by address of both branches of the legislature to the executive) and no longer, unless reappointed thereto.

# STATE OF MAINE.

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IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND FORTY.

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## AN ACT

FOR REVISING, ARRANGING AND AMENDING THE PUBLIC LAWS OF THE STATE.

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WHEREAS it is expedient that the General Statutes of this State should be revised and arranged under appropriate titles, chapters and sections; that omissions and defects should be supplied and amended; and that the whole should be rendered concise, plain and intelligible—

THEREFORE,

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES IN LEGISLATURE ASSEMBLED, in manner as stated under the several titles and chapters following: that is to say:

- CHAP. 1.** district of Columbia and the several territories, so called; and the words "United States" shall be construed to include district and territories.
- Town.** XVII. The word "town" shall be construed to include all cities and organized plantations, unless such construction would be repugnant to the provision of any act specially relating to them.
- Will.** XVIII. The word "will" shall be construed to include codicil, as well as will.
- Written and in writing.** XIX. The words "written" and "in writing" may be construed to include printing, lithographing and any other mode of representing words and letters; provided however, that in all cases, where the written signature of any person is by law required, it shall be the proper hand writing of such person, or, if he cannot write his name, his mark.
- Acts of agents.** XX. When a statute requires an act to be done, which may by law be done as well by an agent as by the principal, such requisition shall be construed to include all such acts when done by an authorized agent.
- Duly sworn, and sworn according to law.** 13 Pick. 305. XXI. Whenever the expression "duly sworn" or "sworn according to law" is used or applied to any officer, who is required to take and subscribe the oath prescribed in the constitution, it shall be construed to mean, that such officer had taken and subscribed the same, as well as made oath faithfully and impartially to perform the duties of the office, to which he had been elected or appointed; and when applied to any person, other than such officer, it shall be construed to mean that such person had taken an oath, faithfully and impartially to perform the duties assigned him in the case specified.
- Persons disinterested or indifferent.** XXII. When a person is required to be disinterested or indifferent in acting upon any question, in which other parties are interested, any relationship in either of said parties, either by consanguinity or affinity, within the sixth degree, inclusive, according to the rules of the civil law, or within the degree of second cousin, inclusive, shall be construed to disqualify such person from acting on such question, unless by the express consent of the parties interested therein.
- Revised statutes take effect April 2, 1841.** SECT. 4. All the chapters of these revised statutes shall take effect from and after the first day of April, in the year one thousand eight hundred and forty one, except where other provision is expressly made.
- Titles and abstracts not to be construed as essential parts of the revised statutes.** SECT. 5. The titles of the several chapters, and the abstracts of the several sections, are not to be construed as essential parts of the revised code.

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## CHAPTER 2.

### OF THE SOVEREIGNTY OF THE STATE, AND OF LANDS CEDED TO THE UNITED STATES.

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| <p>SECT. 1. Sovereignty of the state.</p> <p>2. Where jurisdiction concurrent with the United States.</p> <p>3. Future cessions to the U. States.</p> | <p>4. Compensation for land, so taken.</p> <p>5. Effect of such cession.</p> <p>6. Seat of government.</p> |
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**SECTION 1.** The jurisdiction and sovereignty of the state extend to all places within the boundaries thereof, subject only to such rights of concurrent jurisdiction as have been, or may be, granted over any places, ceded by the state to the United States.

**CHAP. 2.**

Sovereignty of the state.

**SECT. 2.** All places, which have been ceded to the United States, for light houses, forts, arsenals, and other public purposes, and over which concurrent jurisdiction has been granted to the United States, shall continue to be subject to such concurrent jurisdiction, according to the terms of cession, and to the rights of this state, so far as that all civil and military processes, issuing under its authority, may be executed in any part of said premises or buildings thereon.

Where jurisdiction concurrent with the United States.  
8 Mass. 72.  
17 Pick. 298.

**OF FUTURE CESSIONS TO THE UNITED STATES, AND OF THE SEAT OF GOVERNMENT.**

**SECT. 3.** Whenever the United States shall require the cession of the jurisdiction of any lands for the erection of forts, magazines, arsenals, dock yards, and other needful buildings, as provided in the constitution of the United States, the governor, with advice and consent of the council, is authorized to make such cession by proper deeds of conveyance, reserving therein and thereby to the state, its jurisdiction, so far, as to have a right to execute, within the limits of the tract ceded, all civil and criminal processes lawfully issued under the authority of the state; but the tract shall not exceed ten acres, nor include any public or private burying ground, dwelling house, or meeting house, without consent of the owner, nor any highway.

Future cessions to the United States.  
1836, 251, § 1.

**SECT. 4.** If compensation for such land is not agreed upon, the estate may be taken for the intended purpose, by payment of a fair compensation, to be ascertained and determined in the same manner, and by proceedings similar to those, provided for ascertaining the damages in locating highways, in chapter twenty five.

Compensation for land so taken.

**SECT. 5.** All lands so ceded shall continue to be subject to such concurrent jurisdiction, as is mentioned in the first section of this chapter.

Effect of such cession.

**SECT. 6.** The act fixing the place of the permanent seat of government at Augusta, passed on the twenty fourth day of February, eighteen hundred and twenty seven, shall continue in force until altered.

Seat of government.  
1827, 366.

**CHAPTER 3.**

**OF PUBLIC LANDS.**

- SECT. 1.** Present land agent continued.  
**2.** Future appointments.  
**3.** Agent's salary and bond.  
**4.** His duty.  
**5.** Restrictions as to his private business.  
**6.** To account for avails of sales and settlements with trespassers.

- SECT. 7.** Securities to be made payable to the state.  
**8.** Preservation of timber and grass. Prosecution of trespassers.  
**9.** Licenses to cut timber and grass.  
**10.** Agent to attend to his duties personally, unless assistants are necessary.

- CHAP. 3.** **SECT. 11.** In townships for settlement, 1000 acres to be reserved for the use of the town.
12. Agent to restrict such persons as hold or claim more land, than their grant includes.
  13. Proceedings in case of disagreement, as to surplus, or its value.
  14. Mode of designating the lands reserved, as provided in the eleventh section.
  15. Settling lands to be surveyed and lotted before sale.
  16. Agent's assistants to be sworn, and not concerned in the purchase of state lands.
  17. Surveys to be made under the direction of the governor and council and land agent.
  18. Land agent to make accurate maps and descriptions, and deposit them in the land office.
  19. Plans, field books, &c. to be kept both at Augusta and Bangor.
  20. Agent to exhibit the same and give information at his office.
  21. When the agent may lay out or make roads.
  22. Power of land agent to sell public lands.
  23. Mode of advertising.
  24. Terms of sale.
  25. Certain lots may be sold for settling, though not surveyed with that object.
  26. Purchaser to clear fifteen acres and build a house within four years.
  27. Duty of the purchaser of more than one lot. Restriction.
  28. Provision for the erection of a saw mill and grist mill.
  29. No more than five townships to be sold in a year, unless for settling.
  30. Public lands in incorporated townships may be sold by the agent.
- SECT. 31.** Mode of selling land other than settling land.
32. Adjustment of price, when that first demanded is not obtained.
  33. Terms of payment.
  34. Payment to be secured for land sold, whether for settling or other purposes.
  35. Land agent to execute deeds of lands granted by the legislature.
  36. He or his assistants may serve precepts on trespassers.
  37. Agent to carry into effect the resolve of March 9, 1832.
  38. Provision for the Aroostook road.
  39. Work thereon to be done by contract, if suitable proposals can be had.
  40. Proceedings, if the road must be laid out over private property.
  41. Of the prosecution of trespassers on lands of Maine and Massachusetts.
  42. Rule of estimating damages. Certain articles used, forfeited.
  43. Timber, logs or hay cut, may be seized, notwithstanding.
  44. No person concerned in such trespass allowed to purchase the forfeited articles.
  45. Lands reserved in townships for public uses to remain under the agent's care.
  46. Of the agent's reports, accounts and settlements.
  47. The form and particulars of his report.
  48. Moneys from the treasury to be paid on warrant. Agent to keep the notes and return to the treasurer schedules thereof and balance sheets.
  49. Of the collection of notes by the agent.
  50. His report of suits commenced and of costs incurred.

Present land agent continued.  
Future appointments.  
1828, 393, § 1.

**SECTION. 1.** The present land agent shall continue in office, according to the tenor of his appointment.

**SECT. 2.** When there shall be a vacancy in the office, it shall be the duty of the governor, with advice of the council, to appoint another land agent, who shall hold his office during their pleasure, subject however to the limitation of law, respecting the tenure of civil offices.

Agent's salary and bond.  
1836, 244, § 1.  
1835, 192, § 16.

**SECT. 3.** He shall receive an annual salary of one thousand dollars from the state in full for all his services, and shall give bond to the treasurer of the state, in the sum of fifty thousand dollars, with sufficient sureties, to the satisfaction of the governor and council, for the faithful performance of the duties of his office.

His duty.  
1828, 303, § 1.

**SECT. 4.** It shall be his duty to superintend and manage the

sale and settlement of the public lands, and he shall be governed, in making contracts, giving deeds, and in all his other official acts, by the provisions of law.

SECT. 5. No person shall be appointed or continued an agent, for the purposes above mentioned, who is, or shall be, in any manner, directly or indirectly, concerned in the lumber business on state lands, or in the purchase of public lands, or any of the lumber or grass growing or cut thereon.

Restrictions, as to his private business. 1826, 393, § 3.

SECT. 6. The land agent shall receive all moneys and securities accruing to the state, from the sale of lands or grass, or in payment of timber or grass cut by trespassers, and pay over to the treasurer of the state all moneys so received, and found due from him on settlement.

To account for avails of sales and settlements with trespassers. 1826, 393, § 1.

SECT. 7. All securities, given for the sums before mentioned, shall be made payable to the treasurer of the state.

Securities to be made payable to the state. 1826, 393, § 1.

SECT. 8. He may, under the direction of the governor and council, sell at auction, or private sale, any timber or grass growing on the public lands, and take suitable measures for preserving all timber and grass, and prosecute all trespassers on such land, and seize and sell all lumber or grass, so cut by them, giving reasonable and public notice of such sale.

Preservation of timber and grass. 1826, 393, § 1.

Prosecution of trespassers.

SECT. 9. When licenses are given for more than one year, then there shall be paid, on or before the first day of September annually, one half, or one third part of the whole sum, for timber and grass authorized to be cut under the license, according to the times therein mentioned. And no license shall be given for a term exceeding three years.

Licenses to cut timber or grass. 1831, 510, § 6.

SECT. 10. He shall personally attend to the duties of his office, as far as practicable, and employ as many assistants, duly sworn, as may be necessary, for whose conduct he shall be responsible.

Agent to attend to his duties personally, unless assistants are necessary. 1826, 393, § 2.

SECT. 11. In every township suitable for settlement, whether timber land or not, there shall be reserved one thousand acres of land, to average, in quality and situation, with the other land in the township, for the exclusive benefit of such town, as the legislature may hereafter direct.

In townships for settlement, 1000 acres to be reserved for the use of the town. 1826, 393, § 4.

1830, 480, § 2. Agent to restrict such persons, as hold or claim more land than their grant includes.

SECT. 12. When the land agent shall ascertain that any person, deriving title under grant from the state, shall have in possession, or claim a right to, a greater quantity of land than was granted to him, the agent shall demand of him a release to the state of the surplus quantity, or the fair value thereof in money, or security therefor.

Proceedings, in case of disagreement as to surplus, or its value. 1830, 480, § 1.

SECT. 13. If a disagreement, as to the amount of such surplus, or its value, shall exist, the agent may settle the same by reference, or in any other manner agreed upon; but if neither mode, above mentioned, shall be adopted by such claimant, the agent shall report all the facts of the case to the governor, and he, with advice of the council, may direct an inquest of office, or other process in law, that the attorney general shall determine proper, to be instituted, to obtain possession of such surplus.

1830, 480, § 1.

SECT. 14. When a township, or a part of one, shall be sold, subject to the reservation mentioned in the eleventh section; or where, by the terms of sale, such whole or part of a township is to be surveyed and lotted for settling, within a time specified, the owner thereof shall, within three months after such survey and allotment,

Mode of designating the lands reserved, as provided in the eleventh section. 1830, 480, § 2.



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give notice thereof to the land agent, and shall furnish him with a plan of said survey and allotment, and the land agent, with such person as the owner shall appoint, shall select and designate the lands reserved for public uses ; if such owner shall neglect to appoint an agent for the purpose, the land agent shall select and designate the same, and cause a description of the designated lots to be recorded in the registry of deeds, in the county where such lands are situated, at the expense of the state. If the land agent and the person appointed by the owner cannot agree in the selection, they shall represent the facts to the district court for the county, where such lands lie ; and said court shall appoint a committee to perform said service ; and said committee shall make return of their doings to said court ; and, when accepted by said court, the land agent shall cause the same to be recorded as aforesaid.

Settling lands to be surveyed and lotted before sale. 1835, 192, § 5.

**SECT. 15.** No township or tract of land belonging to the state, not already surveyed for settling, shall be sold by the land agent, until all the land in such township or tract shall have been surveyed and lotted ; the land suitable for farming, into lots not exceeding one hundred and seventy acres each ; and the remaining land therein, into lots not exceeding seven hundred acres each.

Agents' assistants to be sworn and not concerned in the purchase of state lands. 1835, 192, § 3. Surveys to be made under the direction of the governor and council and land agent. 1835, 192, § 4. Land agent to make accurate maps and descriptions and deposit them in the land office. 1835, 192, § 5.

**SECT. 16.** All persons employed by the land agent, either as assistants in the land office, or in surveying or exploring lands, shall be sworn to the faithful discharge of their duties, and no person, employed as aforesaid, shall be concerned, directly or indirectly, in the purchase of any lands belonging to the state.

**SECT. 17.** The governor and council, and land agent for the time being, shall constitute a board, under whose directions all surveys shall be made.

**SECT. 18.** The land agent, where lands have been lotted, as provided in section fifteen, shall make, or cause to be made, an accurate map or plan of the lands, as surveyed, on which he shall describe and define, as nearly as may be, the lakes, ponds, rivers, streams, falls or mill sites, and the road or roads, which, in his opinion, may be necessary ; and deposit the same, together with the field notes, in the land office, in three months after completion of the same ; and said field notes shall contain a description of the growth, soil, and general character of each lot.

Plans, field books, &c. to be kept, both at Augusta and Bangor. 1835, 192, § 5. Agent to exhibit the same and give information at his office. 1835, 192, § 5.

**SECT. 19.** Correct plans and field notes of all surveys, and an estimate of the distance of each lot of timber land from any stream, in which timber can be floated to market, or copies of the same, shall be kept in the land offices at Augusta and Bangor.

**SECT. 20.** Such originals or copies shall be open for inspection and copying at all times, when the land agent or his assistant shall be in either of said offices ; and they shall be exhibited at the places where, and during the time when, any of said lands are offered for sale ; and the land agent shall aid in furnishing information to those, who are in search of it, in his office.

When the agent may lay out or make roads. 1835, 192, § 8.

**SECT. 21.** In any township or tract of land, where the land agent shall be of opinion, that there is a sufficient quantity of settling land to make it for the interest of the state to have a road laid out thereon, he may cause such road to be laid through the whole, or part thereof, as may best promote the settlement of the township

or tract, and may expend, in making such road, whatever the lots on the road may sell for, over and above the price, which may be set on lots not on the road, but of the same quality; and such road shall be located before any of the land shall be offered for sale.

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**SECT. 22.** The land agent, under the direction of the governor and council, is authorized to sell public lands, and to give deeds in behalf of the state, of all lands, which he may sell pursuant to law.

Power of land agent to sell public lands.

**SECT. 23.** The land agent shall advertise the settling land in market, once in each year, for two months, in one paper in Boston, one in Concord in New Hampshire, and in one paper, if such there be, in each county in this state, describing the quality and situation of the land, and the terms of sale.

Mode of advertising.  
1835, 192, § 12.

**SECT. 24.** All lands, lotted for settling, shall be sold to those only, who will perform settling duties, as prescribed in this chapter; the price to be fixed by the land agent, not, however, at a less price than fifty cents an acre: which price shall be fixed on each lot before the day of sale; three fourth parts of the price shall be paid within three years from the sale, in labor in making roads in such township, under the direction of the land agent, and the residue of the price to be paid in cash, within four years from the time of sale; provided, that in all townships where the state is not the owner of at least one half of the land, the several payments may be required in cash or labor, at the option of the land agent.

Terms of sale.  
1835, 192, § 6.  
1836, 354, § 1.

**SECT. 25.** The land agent is authorized to sell as settling land, any lots of land not surveyed as such, but more suitable for settling than timber lands, in which case, the large lots shall be considered equivalent to four settling lots, and shall be subject to the same settling duties.

Certain lots may be sold for settling, though not surveyed with that object.  
Resolves 1839, 64.

**SECT. 26.** The purchaser of one lot shall be required to clear, in a proper manner, fifteen acres thereof, ten or more of which shall be well laid down to grass; and to build a house thereon, within four years from the purchase of the lot.

Purchaser to clear fifteen acres and build a house within four years.  
1835, 192, § 7.

**SECT. 27.** Any person, who shall purchase more than one lot, shall be required to clear ten acres, and lay down to grass the same proportion on each lot, and build a house on one of said lots within said term: but there shall not be sold, to any one person, more than four of said lots in any one township or tract.

Duty of the purchaser of more than one lot.  
1835, 192, § 7.  
Restriction.

**SECT. 28.** Whenever twenty, or a less number of individuals, shall each select a lot of land, not exceeding one hundred and seventy acres, in any township lotted for settlers, the same having no mill within its limits, and shall give bond satisfactory to the land agent, that they will, within three years from the time of said selection, erect, in a proper and substantial manner, a saw mill and grist mill on such lot, within said township, as shall be designated by the board of internal improvements, they shall be entitled to a deed of such lot, and each individual shall receive a deed from the land agent, of his respective lot, without any further consideration; conditioned, however, for his performance of the settling duties according to law.

Provision for the erection of a saw mill and grist mill.  
1838, 354, § 2.

**SECT. 29.** Not more than five townships, excepting the settling land, shall be sold in any one year.

No more than five townships to be sold in a

year, unless for settling. 1835, 192, § 11.

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Public lands in incorporated towns may be sold by the agent. 1835, 192, § 13. Mode of selling land, other than settling lands. 1835, 192, § 9.

**SECT. 30.** Land belonging to the state, situate in any town now incorporated, or which may be incorporated, may be sold by the land agent, in the manner provided in the twenty fourth section.

**SECT. 31.** All land, excepting settling land, shall be first offered for sale at auction, at the price set upon it by the land agent; and, sixty days before any of said land is offered for sale, he shall give notice of the time and place of sale, and of the price and terms, and a description of the land, by advertising in the state paper, in one paper in the city of Boston, and in one paper, if such there be, in each county in the state, and the price fixed upon said land shall be the price he would sell for, provided he were authorized to sell at private sale; he shall have posted up in some conspicuous place the conditions of such sale, one of which shall be, that immediately after a lot of land is struck off to any bidder, he shall give said agent satisfactory evidence that he will comply with his bid; and if any bidder shall neglect so to do, the land shall be immediately again offered at auction, as before.

Adjustment of price, when that first demanded is not obtained. 1835, 192, § 9.

**SECT. 32.** If the price fixed on by the land agent shall not be offered by any one, he may at any time afterwards sell the same at private sale, but not at a less price than that, at which it was offered for sale; and if any of such land should remain unsold twelve months from the date of said advertisement, he may fix a different price upon the same, and proceed to advertise and sell, as in the first instance.

Terms of payment. 1835, 192, § 10.

**SECT. 33.** In the sale of all land belonging to the state, excepting to settlers, the land agent shall require of the purchaser one fourth part of the purchase money in cash, and the remainder in cash, or in three equal payments with interest annually, at the option of the purchaser.

Payments to be secured for land sold whether for settling or for other purposes. 1832, 30, § 2. 1835, 192, § 10.

**SECT. 34.** If the land sold be settling land, the annual payments shall be secured by good and sufficient surety or sureties, or by retaining a lien thereon, by the terms of the land agent's deed; and if the land be of any other description, then the annual payments shall be secured by retaining a lien thereon, and by notes, with two or more sureties, to the satisfaction of the land agent; and the liens above mentioned, being so retained by the terms of the agent's deed, shall be equivalent to a mortgage of the same land to the state.

Land agent to execute deeds of lands granted by the legislature. 1823, 303, § 5.

**SECT. 35.** The land agent is hereby authorized to execute deeds in behalf of the state, conveying any lands, which have been, or may be, granted by the legislature, so soon as the grantees have complied with the conditions of their respective grants, and collect all sums now due, or which may become due, from any of the sources mentioned in this chapter.

He or his assistants may serve precepts on trespassers. Resolves, 1829, 32.

**SECT. 36.** The land agent, or his assistants by him authorized in writing, may serve any precepts on trespassers upon the public lands of this state, or of the commonwealth of Massachusetts, or both, wherein this state and said commonwealth, or either of them, may be parties.

Agent to carry into effect the resolve of March 9, 1832, 119.

**SECT. 37.** The land agent is empowered and required to carry into effect the provisions of a resolve respecting the sale, disposition and management of the public lands, belonging to the commonwealth

of Massachusetts and the state of Maine jointly, and of lands belonging to said states in severalty, approved March ninth, eighteen hundred and thirty two. CHAP. 3.

SECT. 38. The land agent may expend in opening, clearing, causewaying, and making the Aroostook road, laid out from the military road to the mouth of Fish river, safe and convenient for travellers, from time to time, such sums of money as may be necessary, not exceeding, however, ten per cent. of the sales of timber and lands, provided, that the commonwealth of Massachusetts shall authorize and empower her land agent to lay out and expend, for the above purpose, equal sums of money, or so much as the land agents of said state and said commonwealth shall agree to expend for the purpose, not exceeding the above per centage on sales.

Provision for the Aroostook road. 1831, 510, § 4.

SECT. 39. If satisfactory proposals can be obtained, the land agents shall make said road, including bridges and causeways, by contract, and, for that purpose, they shall give public notice, and describe in such notice the proposed sections of the road, and the manner of making and finishing the same in all respects; and request proposals therefor; the contractor giving sufficient security to perform said contract; and if the land agents shall not deem it for the interest of the state to accept any proposals, which may be made, they shall cause the same to be constructed by such persons, as they may employ.

Work thereon to be done by contract, if suitable proposals can be had. 1831, 510, § 4.

SECT. 40. Whenever it shall be necessary, that any part of said road shall pass over lands of proprietors, other than said state and commonwealth, the county commissioners in the county where such lands lie, shall lay out the road over such lands, and take legal measures for making and completing the same, and the whole road, when made and completed, shall be, to all intents and purposes, a county road.

Proceedings if the road must be laid out over private property. 1831, 510, § 4.

SECT. 41. If any person shall, without liberty, enter and trespass upon any lands of this state, or of the commonwealth of Massachusetts, or upon the undivided lands belonging to the state and said commonwealth, and cut down, take and carry away, or cut down for the purpose of carrying away the same, and converting it to his own use, any trees or grass, standing and growing on said lands, such person, and all those furnishing teams, oxen, horses, sleds, chains, or other implements, or the supplies of provisions, or other articles, which shall be used in committing and carrying on the trespasses aforesaid, shall be, and are declared to be, trespassers, and to be jointly and severally liable in damages, and they may be sued in any county in the state.

Of the prosecution of trespassers on lands, of Maine or Massachusetts. 1831, 510, § 7. 1839, 376.

SECT. 42. The measure of such damages shall be the highest price, which such timber, logs, or other lumber, or hay, shall bring at the usual place of sale of such articles; and all such teams, horses, oxen, sleds, chains and other implements, supplies of provision, or other articles, employed or used as aforesaid, shall be forfeited to the use of the said state, or commonwealth, or both, according to the title to land where the trespasses shall be committed.

Rule of estimating damages. Certain articles used, forfeited. 1831, 510, § 7.

SECT. 43. Nothing contained in the two preceding sections shall affect the right of the said state, or commonwealth, or both, of seizing and selling any of such timber, logs or hay, cut as above mentioned.

Timber, logs or hay cut may be seized notwithstanding. 1831, 510, § 7.

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No person concerned in such trespass allowed to purchase the forfeited articles.  
1831, 510, § 7.  
Lands reserved in townships for public uses to remain under the agents' care.  
1831, 510, § 9.  
Of the agents' reports, accounts and settlements.  
1828, 393, § 9.

The form and particulars of his report.  
1828, 393, § 9.  
1835, 192, § 15.

Money from the treasury to be paid on warrant. Agent to keep the notes and return to the treasurer schedules thereof and balance sheets.  
1835, 192, § 14.

Of the collection of notes by the agent.  
1835, 192, § 14.  
1836, 244, § 3.

His report of suits commenced and of costs incurred.  
1836, 244, § 2.

**SECT. 44.** In the sales of the timber, logs and hay, so seized, no person, who was in any way concerned in committing such trespass, or in supplying those, who committed the same, shall be allowed, directly or indirectly, to purchase any part thereof.

**SECT. 45.** The land agent shall take care of the public lots, which have been, or hereafter shall be, reserved for public uses, in the several townships in the state, until the fee of such land shall vest in the town, or otherwise, by force and effect of the grant thereof, and preserve the same from pillage and trespass.

**SECT. 46.** The land agent shall report to the governor and council, once in three months, and oftener, if required, a particular account of all his doings in his office, and the names of his agents; and they are hereby authorized to audit and settle his accounts, at the close of each year, prior to the annual session of the legislature, and at such other times as may be designated.

**SECT. 47.** He shall, in his reports, particularly describe all the lands, which have been surveyed for sale and settlement, and exhibit plans of the same, together with the field notes of the surveyor; and when any land has been sold, he shall describe the same, and report the sum received therefor, the names of the purchasers, and their sureties; the names of the trespassers, the amount of the timber cut, and the place where, whether on settling or timber land, and the sum received per thousand feet, where he shall have settled with trespassers; and the sums he receives, from time to time, on the demands now due, or which may become due: distinguishing the sums paid for principal and interest, and the names of the persons, from whom received, and all other particulars required by the governor and council, and also an abstract of all notes, bonds, obligations and other securities, with the names of the debtors and sureties, together with such collateral security, as may have been taken to insure payment.

**SECT. 48.** The money to be paid out of the treasury, by virtue of this chapter, shall be paid by a warrant from the governor, as in other cases; and all notes taken by the land agent, on account of the state, shall be safely kept by him, and he shall make out a schedule of said notes, annually, and also quarterly trial balances, and balance sheets of the land office ledger, and shall return the same to the state treasurer, who shall enter the same in a book kept for that purpose.

**SECT. 49.** It shall be his duty to collect all notes taken, other than for settling lands, as soon as they may become due, and collect interest, at least annually, and pay, at the expiration of every month, into the state treasury, all moneys collected or received by him, on account of sales of public lands, and for timber and grass cut by trespassers.

**SECT. 50.** He shall make his annual report to the governor and council, and include therein a written statement of the number of suits instituted on notes given for lands sold, and for timber and grass cut by trespassers, or otherwise, and the amount of costs in each of said suits, for the year preceding.

**CHAPTER 4.****CHAP. 4.**

## OF THE STATE LIBRARY.

**SECT. 1.** Certain rooms in the capitol reserved as a place of deposit for the books of the state.

2. Secretary to be librarian. Provision for a substitute. Catalogue. Recovery of damages.

3. Sums appropriated, how expended.

4. Who may take books from the library.

**SECT. 5.** Register of books issued and returned. When books must be returned

6. Borrowers held responsible.

7. Copies of laws, documents and judicial decisions to be transmitted to other states.

**SECTION 1.** The books now belonging to the state, and such as shall be hereafter purchased, or received by the state, shall be collected and deposited in the south wing of the capitol, in rooms numbered three and four, and shall compose the state library.

**SECT. 2.** The secretary of state shall be librarian, and take charge of the library, under such regulations, as are hereinafter established, and cause a catalogue of books to be prepared and kept; and he may appoint an assistant during the session of the legislature, whose compensation shall not exceed that of an engrossing clerk: provided however, that the governor, with advice of the council, may appoint the superintendent of the public buildings a librarian, with a compensation not exceeding one hundred dollars a year. Actions for the breach of said regulations may be brought by the secretary of state for the time being, in his own name, for the use of the state, and in case of the death or removal from office of such secretary, the action shall survive, and be prosecuted in like manner by his successor.

**SECT. 3.** All sums of money appropriated and unexpended, or which may be hereafter appropriated by the legislature for the purchase of books, shall be expended by the secretary, under the direction of the governor.

**SECT. 4.** Books may be taken from the library by the governor, members of the council, of the senate and house of representatives, judges of the judicial courts, secretary of state, treasurer of the state, adjutant general, attorney general and land agent.

**SECT. 5.** The librarian shall cause to be kept a register of all books issued and returned, at the times they shall be so issued and returned, and none so issued shall be retained more than three weeks, and all shall be returned on or before the first day of January annually.

**SECT. 6.** Every person shall be answerable for all damage done by him to any book, and in case of the loss of a volume belonging to a set, the person answerable therefor shall procure a new volume, or pay in money the value of the set.

**SECT. 7.** The governor may transmit to the governors of the several states, three copies of all the laws and resolves, published by order of the legislature, one copy of all public documents, printed and bound by the like order; and one copy of the printed decisions of the judicial courts.

Certain rooms in the capitol reserved as a place of deposit for the books of the state. 1839, 402, § 1. Secretary to be librarian. Provisions for a substitute. Catalogue. Recovery of damages. 1839, 402, § 2.

Sums appropriated, how expended. 1839, 402, § 3.

Who may take books from the library. 1839, 402, § 4.

Register of books issued and returned. When books must be returned. 1839, 402, § 5.

Borrowers held responsible. 1839, 402, § 6.

Copies of laws, documents and judicial decisions to be transmitted to other states. 1839, 402, § 7.

**CHAPTER 5.**

OF TOWN MEETINGS AND TOWN OFFICERS AND BOUNDARIES.

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| <p>SECT. 1. Town meetings to be called by the selectmen.</p> <p>2. First meeting after incorporation, and when a town is destitute of officers.</p> <p>3. If selectmen unreasonably refuse, ten or more voters may apply to a justice. The same number may require an article to be inserted in the warrant.</p> <p>4. Form, and articles specified in the warrant.</p> <p>5. Directed to a constable.</p> <p>6. Mode of notice.</p> <p>7. Of the return.</p> <p>8. Who are qualified voters.</p> <p>9. Annual meetings and choice of officers.</p> <p>10. Certain officers to be chosen by ballot.</p> <p>11. Clerk, or other officer, to preside at the choice of moderator; and a clerk pro tem. in certain cases.</p> <p>12. Oath of the town clerk.</p> <p>13. Mode of summoning officers elect to take the oaths.</p> <p>14. Penalty for neglecting to be sworn.</p> | <p>SECT. 15. Certificates and record of oaths administered.</p> <p>16. Vacancies may be filled at special meetings.</p> <p>17. Choice of moderator and his duties.</p> <p>18, 19. Powers of the moderator.</p> <p>20. Meeting for the choice of state officers.</p> <p>21. Folded votes not to be received. Votes not to be examined to ascertain the candidate's name till the poll is closed.</p> <p>22. Powers of towns to raise money and make by laws. Penalties. Costs to be defrayed by the towns.</p> <p>23. Towns declared to be corporations.</p> <p>24. Town boundaries to be preserved.</p> <p>25. Of perambulations. How notice shall be given, and a record made.</p> <p>26. When towns erect stone monuments, lines may be perambulated once in ten years only.</p> <p>27. Commissioners appointed by the supreme judicial court to settle lines. Their proceedings.</p> <p>28. Their compensation.</p> |
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Town meetings to be called by the selectmen. 1821, 114, § 5. 10 Mass. 105. 13 Maine, 466. First meeting after incorporation and when a town is destitute of officers.

**SECTION 1.** Every town meeting, except in the cases mentioned in the two following sections, shall be called by a warrant, signed by the selectmen of such town.

1826, 336.

**SECT. 2.** The first town meeting held in any town shall be called and notified in the manner prescribed in the act incorporating such town; and if no mode is therein prescribed, by any justice of the peace in the same county, or when a town, though it has been organized, is destitute of officers, a meeting may be called on application to him for his warrant for the purpose, made in writing by any three of the inhabitants thereof; but when, by reason of death, removal or resignation of selectmen, a major part shall not remain in office, a major part of those remaining in office shall have the same power to call a town meeting, as a majority of those chosen.

If selectmen unreasonably refuse, ten or more voters may apply to a justice.

**SECT. 3.** In case the selectmen shall unreasonably refuse to call a town meeting, on any public occasion, any ten or more legal voters in said town may apply to a justice of the peace in the same county, who is hereby authorized to issue his warrant, under his hand, for calling such meeting. And when ten or more of the qualified voters in town shall request in writing, that the selectmen should insert a particular matter or thing in a warrant for calling a town meeting, they shall insert the same in the next warrant they shall issue for a meeting, or call a meeting for the express purpose of the consideration thereof.

The same number may require an article to be inserted in the warrant. 1821, 114, § 5.

Form, and articles specified in the warrant.

**SECT. 4.** In either case the warrant shall specify the time and place, at which the meeting is to be held; and in distinct articles,

shall state the business to be acted upon at such meeting; and no other business, matter or thing shall be there acted upon, so as to have any binding effect, or legal operation. **CHAP. 5.**

**SECT. 5.** The warrant may be directed to any constable of the town, or any individual by name, directing him to warn and notify all persons, by law qualified to vote at such meeting, to assemble at the time and place appointed. 1821, 114, § 5.  
9 Pick. 97.  
21 Pick. 61.  
Directed to a constable.  
1821, 114, § 5.

**SECT. 6.** Such meeting shall be notified by the person, to whom the warrant is directed, by his posting up an attested copy of such warrant, in some public and conspicuous place in said town, seven days before the meeting; unless the town has appointed, or shall appoint, by vote, in legal meeting, a different mode; which any town is hereby empowered to do. Mode of notice.  
1821, 114, § 5.

**SECT. 7.** In either case, the person, who notifies the meeting, shall make his return on the warrant, stating the manner of notice, and the time it was given. Of the return.  
12 Pick. 206.  
13 Pick. 306.

**SECT. 8.** Every person, who is qualified, by the constitution of this state, to vote for governor, senators and representatives, in the town or plantation, in which he resides, shall be entitled to vote in the election of all town or plantation officers, and in all the business affairs of the same. Who are qualified voters.  
1833, 49, § 1.  
1838, 348, § 2.

**SECT. 9.** The annual town meetings in the state shall be held in the month of March or April, and the qualified voters in each town shall then choose, by a major vote, a clerk, three, five or seven persons, inhabitants of the town, to be selectmen, and overseers of the poor, when other persons shall not be chosen to that office, three or more assessors, two or more fence viewers, treasurer, surveyors of highways, surveyors of lumber, tythingmen, sealers of leather, measurers of wood and bark, constables, and collectors of taxes, and other usual town officers, who shall be duly sworn. Annual meetings and choice of officers.  
1821, 114, § 1.  
1824, 260, § 3.  
10 Mass. 105.

**SECT. 10.** The election of moderator, town clerk, selectmen, assessors, treasurer, school committee and town agent, shall be by ballot; and all other of said officers may be by ballot, or other method agreed on by a vote of the town. Certain officers to be chosen by ballot.  
1821, 114, § 1.

**SECT. 11.** During the election of moderator of any town meeting, the clerk shall preside; but whenever he shall be absent from any such meeting, either of the selectmen or of the assessors; and, if neither of those be present, any constable may lawfully do all the duties of clerk, in receiving and counting the votes for moderator: and the moderator, when chosen, may call on the voters to give in their ballots for a clerk pro tempore, who shall be sworn by the moderator, or a justice of the peace. Clerk, or other officer, to preside at the choice of moderator; and a clerk pro tem. in certain cases.  
1824, 260, § 1, 2.  
9 Mass. 262.

**SECT. 12.** The town clerk, before entering on the duties of his office, shall be sworn before the moderator or a justice of the peace, truly to record all votes passed in such, and other town meetings during the ensuing year, and until another clerk shall be chosen and sworn in his stead; and also faithfully to discharge all the other duties of said office. Oath of the town clerk.  
1821, 114, § 1.  
13 Pick. 229.

**SECT. 13.** The town clerk, or two of the selectmen shall forthwith make out a list of the names of all those, who shall have been chosen into office, of whom an oath is required by law, and deliver the same to a constable, with a warrant to him directed; and he Mode of summoning officers elect to take the oaths.  
1821, 114, § 1.



**CHAP. 5.** shall be required, within three days from the day of receiving it, to summon each of the persons therein named, to appear before the town clerk, within seven days from the time of notice, to take the oath of office, by law required; and, at the end of ten days after receiving his warrant, the constable shall return the same, or forfeit six dollars for the use of the town; and the town shall allow him a reasonable compensation for his services.

Penalty for neglecting to be sworn.  
1821, 114, § 1.  
10 Mass. 105.

**SECT. 14.** Every person so notified, and neglecting so to appear, and take the oath required of him, within said seven days, which said clerk is authorized to administer, shall forfeit and pay five dollars to him, who shall inform and prosecute therefor (except those officers, for whose neglect a different penalty is provided,) two thirds for the use of the town, and the other third to the use of the prosecutor.

Certificates and record of oaths administered.  
1821, 114, § 1.  
1837, 269, § 1, 2.

**SECT. 15.** When any town, plantation or parish officer, shall be sworn by the clerk of such corporation, he shall record his own certificate thereof formally and at full length; and when any such officer shall be sworn before any other person or magistrate, he shall give a formal and full certificate of the oath administered by him, officially signed, to the person sworn; and such person shall, within seven days, deliver such certificate to the clerk of the town, plantation or parish, and he shall record the same at full length, within seven days after receiving it, and if the clerk, or the person sworn, shall neglect his duty in the above particulars, he shall forfeit and pay five dollars to the use of the town. The clerk's fee for recording each certificate shall be five cents, to be paid by the town. Provided, that where a certificate of any town, plantation or school district clerk, entered on the record, is, that he has been duly elected into the office of clerk, or any other office, requiring an oath to be administered to him, and that he has taken the oath by law required, it shall be sufficient evidence that he holds such office, and has been duly sworn.

Vacancies may be filled at special meetings.  
1821, 114, § 2.

**SECT. 16.** Whenever, by reason of non-acceptance, death or removal of any person, chosen into any town office, at any annual meeting, or at any other time, or by reason of insanity, or other incompetency, there may be a vacancy, or want of officers, the town may proceed to a new choice of officers; and they shall be duly sworn, if an oath is required, and have the same power as if elected at the annual meeting.

Choice of moderator, and his duties.  
1821, 114, § 3.

**SECT. 17.** At every town meeting a moderator shall be first chosen, and sworn to the faithful and impartial discharge of the duties of his office, by a justice of the peace, or by the person presiding at the meeting when he is chosen: said moderator shall regulate the business of the meeting; and when a vote declared by him shall, immediately after such declaration, be questioned by seven or more, he shall make the vote certain by polling the voters, or in such other way, as the meeting may direct.

Powers of the moderator.  
1821, 114, § 3.

**SECT. 18.** No person shall speak in meeting before leave is obtained of the moderator, nor when any other person is speaking; and all shall be silent at the command of the moderator, on pain of forfeiting one dollar for every breach of such order, for the use of the town.

SECT. 19. If any person, after notice from the moderator, persist in any disorderly conduct, the moderator may direct him to withdraw from the meeting, and, by his refusal, he shall forfeit twenty dollars to the use of the town; and the moderator may cause him to be removed from the meeting by a constable, and detained in confinement for three hours, unless the meeting shall be sooner dissolved or adjourned.

SECT. 20. Town meetings for the choice of governing officers and representatives, shall be as the constitution directs; and the foregoing sections are not to be deemed applicable to such meetings.

SECT. 21. The moderator, or other person presiding at any town meeting, shall not receive any vote folded or doubled, and shall not permit any person, without the consent of the voters, to read or examine the name or names written on his ballot, with a view of ascertaining the name of the candidate, before the poll is closed by the moderator, on penalty of twenty dollars, to be recovered in indictment.

SECT. 22. The qualified voters of any town at any legal town meeting, may grant and vote such sums, as may be necessary for the maintenance and support of schools and the poor; and for making and repairing highways and town ways and bridges, purchasing and fencing burying grounds, and other necessary charges, arising within the same; and may make such orders and by-laws for managing the prudential concerns of the town, as they may judge conducive to the good order and peace of the same, and under penalties not exceeding five dollars for any one offence: provided, such orders or by-laws shall be approved by the county commissioners; and provided, that in all prosecutions for penalties for the breach of the by-laws of any city or town, the costs of prosecution shall be a proper charge against such city or town, and shall be paid out of the treasury thereof.

SECT. 23. The inhabitants of every town are declared to be a body corporate and politic, and, as such, may sue and be sued, and appoint agents or attorneys.

SECT. 24. The bounds of all townships shall remain as determined before granted, settled and established, and the lines between towns shall be run once in every five years, except as mentioned in the twenty sixth and twenty seventh sections.

SECT. 25. The selectmen of the most adjacent town shall give ten days notice, in writing, to the selectmen of the adjoining town, of the time and place of meeting for perambulation; and the selectmen, who shall neglect their duty in notifying or attending in person, or by substitutes, shall forfeit and pay ten dollars, two thirds to the use of the town, which shall comply with their duty, and the other third to any two or more of the selectmen of the town, to be recovered, at any time within two years after the forfeiture is incurred; and the proceedings of such selectmen, after every such renewal of boundaries, shall be recorded in their respective town books.

SECT. 26. All towns, which, since the twenty second day of March, in the year eighteen hundred and twenty eight, have perambulated, or hereafter shall perambulate their several lines, as by law

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TOWNS.  
SECTION 19.

SECTION 20.  
SECTION 21.  
SECTION 22.

SECTION 23.  
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SECTION 25.

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SECTION 27.

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SECTION 29.

SECTION 30.

SECTION 31.

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perambulated once in ten years only. 1838, 340.

Commissioners appointed by the S. J. C. to settle lines. 1832, 43, § 1.

Their proceedings.

Their compensation. 1832, 43, § 2.

prescribed, and have established, or shall establish and set up stone monuments, at least two feet high, at all the corners and several angles, and where the line shall cross highways, or on or near the banks of all rivers, bays, lakes or ponds, which said lines may cross, or which are the boundaries of said lines, shall be exempted from the duty of perambulating said lines, except once in every ten years, commencing in ten years from the time, the stone monument has been erected, in the manner above described.

SECT. 27. When a town shall petition the supreme judicial court, stating that a controversy exists between such town and an adjoining one, and praying, that the same may be run by commissioners, to be appointed by such court, the court may, after due notice being given to all parties concerned, appoint three commissioners, who shall, after giving notice to all persons interested of the time and place of meeting, ascertain and determine the line or lines in dispute, and describe the same by courses and distances, and make, set, and mention in their return, suitable monuments and marks for the permanent establishment of such lines, and make duplicate returns of their proceedings; one of which shall be returned to the court, and the other to the office of the secretary of state; and such line or lines, so established and accepted, shall be deemed, in every court of law, and for every purpose, the true dividing line or lines between such towns.

SECT. 28. The court may allow the commissioners a proper compensation for their services, and issue a warrant of distress for its collection, according to law, of said towns, in equal proportions.

CHAPTER 6.

OF THE REGULATION OF ELECTIONS.

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| <p>ARTICLE I. OF LISTS OF ELECTORS.</p> <p>SECT. 1. Lists of voters to be prepared by selectmen by eleventh of August, annually.</p> <p>2. If selectmen are not assessors, previous lists to be made out by assessors.</p> <p>3. Special meetings of selectmen to correct list of voters in certain cases. Notice of such meetings.</p> <p>4. Such lists to be deposited with town clerk, and posted up.</p> <p>5. Names of qualified voters to be inserted, whether they apply or not.</p> <p>6. Subsequent alterations.</p> <p>7, 8, 9. When selectmen shall meet to correct the lists.</p> <p>10. Notice to be given of such meetings.</p> <p>11. Lists of electors of town officers.</p> | <p>SECT. 12. Sessions of the selectmen for that purpose.</p> <p>13. Foregoing provisions made applicable to cities.</p> <p>ARTICLE II. OF NOTIFYING MEETINGS, AND PROCEEDINGS AT ELECTIONS, AND RETURNS.</p> <p>14. Meetings for general elections, how called.</p> <p>15. When such meeting shall be opened.</p> <p>16. Presiding officers empowered, as moderators.</p> <p>17. When selectmen <i>pro tem.</i> may be chosen.</p> <p>18. Who shall preside at such choice.</p> <p>19. Duties of selectmen <i>pro tem.</i></p> <p>20. What votes may be offered on one list.</p> <p>21. Check lists and suitable ballot boxes to be used.</p> |
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SECT. 22. Of votes marked, or on colored paper.

23, 24, 25. When no choice of representative can be effected, the meeting to be adjourned.

26. Provisions for the choice of certain other officers, and determining questions submitted to the people.

27. How the result of ballotings shall be ascertained.

28. Clerks to transmit returns of votes to the secretary of state.

29. In case of failure, secretary to notify the attorney for the county. Proceedings.

30. New certificates to be returned in case of loss.

31. How authenticated.

32. How sealed and returned.

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ARTICLE III. SPECIAL PROVISIONS AFFECTING CITIES, PLANTATIONS AND REPRESENTATIVE DISTRICTS.

34. Foregoing provisions extended to organized plantations

35. And cities, except where express provision is made.

36, 37. Duties of city officers in elections.

38. Electors in cities to meet in wards.

39. Choice of warden *pro tem*.

40. Special regulations for voters on islands in Portland.

41. Proceedings at their meetings. How the votes shall be returned.

42. When representatives may be voted for on a separate ticket in cities.

43. If no choice be made, further meetings.

44. Aldermen to meet on days of election to revise lists of voters.

45. Three to constitute a quorum.

46. When towns are classed, meetings of selectmen to examine votes for representatives, how called.

SECT. 47. If no choice be made, new meetings to be called.

48. If a choice, copies of the lists to be furnished to the person elected.

49, 50. If a vacancy happen, further proceedings.

51. Of notice in contested elections.

52. Of voters in unincorporated places.

ARTICLE IV. PENAL PROVISIONS AND REGULATIONS AFFECTING THE PURITY OF ELECTIONS.

53. General provisions in case of neglect or misconduct of selectmen and certain other officers.

54. Punishment for neglect of the warning officer.

55. Also of selectmen, for not preparing and publishing lists of voters.

56. And for not using check lists, and for receiving illegal votes.

57. Penalties in the two preceding sections, how recovered.

58. Penalties for neglect of requirements of sections 30, 31 and 32.

59. Also for false certificates in such cases.

60. Neglect of person entrusted with returns.

61. County attorney's duty when notified of the failure of any return.

62. Liability of town officers modified.

63. Punishment for the misconduct of any elector.

64. Forfeiture by military officers parading their men on days of election.

65. How the penalties in the two preceding sections shall be recovered.

66. Punishment for bribery and corruption at elections.

67. Sale of ardent spirits prohibited within 200 rods of any meeting.

68, 69. Liquors and other materials to be seized and detained.

70. The same may be sold.

71. How avails of sale may be disposed of.

ARTICLE I. OF LISTS OF ELECTORS.

SECTION 1. The selectmen of every town shall, on or before the eleventh day of August in each year, make out a correct alphabetical list of such inhabitants of their respective towns, as shall appear to them to be constitutionally qualified to vote in the election of governor, senators and representatives in the state government.

SECT. 2. In every town, where the selectmen are not the assessors, the assessors shall, on or before the first day of August in each year, make out, according to their best judgment, a correct list of the persons qualified as aforesaid, and deliver the same to the selectmen, for their information, and to be by them revised and corrected.

List of voters to be prepared by selectmen by eleventh of August, annually. 1821, 115, § 1. 12 Pick. 485.

If selectmen are not assessors, previous lists to be made out by assessors. 1821, 115, § 1.

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Special meet-  
ings of select-  
men to correct  
lists of voters in  
certain cases.

Notice of such  
meetings.  
1833, 89, § 1.

Such lists to be  
deposited with  
town clerk and  
posted up.  
1831, 518, § 1.

Names of qual-  
ified voters to  
be inserted,  
whether they  
apply or not.  
1831, 518, § 1, 2.  
Subsequent al-  
terations.  
1831, 518, § 2.

When select-  
men shall meet  
to correct the  
lists.  
1833, 89, § 1.

Same subject.  
1821, 115, § 2.

Same subject.  
1831, 518, § 2.  
1837, 300, § 1.

Notice to be  
given of such  
meetings.  
1821, 115, § 1.  
3 Greenl. 306.

Lists of elec-  
tors of town of-  
ficers.

**SECT. 3.** In every town, having, by the census of the United States then last taken, more than three thousand inhabitants, the selectmen shall be in open session, for the purpose of receiving evidence of the qualifications of persons claiming the right to vote in any such election, and for correcting their said list, for a reasonable time, not exceeding two days, between the eleventh and eighteenth days of August of each year; and shall give notice of the time and place of their session, in the same manner, as meetings of the inhabitants of said town may be notified.

**SECT. 4.** On or before the twentieth day of August, annually, the selectmen of every town shall deposit in the office of the town clerk, and shall also post up, in one or more public places in the town, a list of electors prepared and revised as in the preceding sections.

**SECT. 5.** The selectmen, at any regular session for correcting such list, shall place thereon the name of every person known by, or proved to them to be qualified as aforesaid, whether such person applies therefor or not.

**SECT. 6.** After such list is prepared and deposited with the clerk, and posted up, as provided in the preceding sections of this chapter, the selectmen shall not add thereto, nor strike out the name of any person, except as provided in the four following sections.

**SECT. 7.** In every town, containing, by such last census, more than three thousand inhabitants, the selectmen shall be in open session for a reasonable time, for the purpose of correcting such list, on the Friday and Saturday next preceding the second Monday of September, annually.

**SECT. 8.** In every town, containing more than two thousand qualified electors, the selectmen shall be in open session for a reasonable time, on the day preceding any election of governor, senators, representatives in the state legislature, or in congress, or of electors of president and vice president of the United States, and previously, if they see cause, for the purpose of hearing and deciding on applications of persons claiming the right to vote at such election; provided, that if the election be appointed for Monday, such previous session shall be held on Saturday, instead of such preceding day.

**SECT. 9.** In every town, the selectmen shall be in session on the day of any such election, to receive and decide on such applications, at some convenient place, for so long a time immediately preceding the opening of the polls, as they shall think necessary, and shall hear and determine any such application, at any time before the polls are closed; provided, that when the town contains five thousand inhabitants, or more, no such application shall be received after three o'clock in the afternoon of said day.

**SECT. 10.** The selectmen shall order notice of the time and place of all their sessions, required or authorized in the three preceding sections, to be given in the warrant for calling the respective town meetings.

**SECT. 11.** The selectmen of every town shall make out a correct and alphabetical list of the inhabitants in their respective

towns, qualified to vote in the choice of town officers, and deposit such list in the office of the town clerk, and put up a copy thereof, in one or more public places in such town, on or before the twentieth day of February, annually.

**CHAP. 6.**1821, 115, § 14.  
3 Greenl. 290.

**SECT. 12.** The said selectmen shall be in session, at some convenient time and place, to be by them notified in the warrant for calling the meeting in such town, on the day next preceding the day of annual election of town officers, in the month of March or April, annually, unless the same happen on the Lord's day, in which case, the selectmen shall be in session on the Saturday preceding, or the morning of the day of election, and for so long a time, as they may judge necessary, to receive evidence of the qualifications of persons claiming to have their names entered on said list.

Sessions of the selectmen for that purpose. 1821, 115, § 14.

**SECT. 13.** The aldermen and assessors of the cities shall prepare lists of the qualified voters for governor, senators and representatives in the state legislature, in and for the several wards in their respective cities, in the same manner, as selectmen and assessors are required to prepare them for towns, the aldermen performing the duties of selectmen, and the city wardens shall be governed by said lists.

Foregoing provisions made applicable to cities. 1835, 189, § 2.

**ARTICLE II. OF NOTIFYING MEETINGS, AND PROCEEDINGS AT ELECTIONS, AND RETURNS.**

**SECT. 14.** The selectmen of every town, by their warrant, shall cause the inhabitants thereof, qualified according to the constitution, to be notified and warned, seven days at least before the second Monday of September, annually, to meet at some suitable place, to be designated in said warrants, to give in their votes for governor, senators and representatives, as the constitution requires; and such meeting shall be warned in the manner legally established for warning other town meetings, in such town.

Meetings for general elections, how called. 1821, 115, § 4.

**SECT. 15.** No such meeting shall be opened before ten o'clock in the forenoon, on the day of the election aforesaid, unless the number of qualified voters in such town shall exceed five hundred; in which case, an earlier and suitable time in the day may be appointed by the selectmen.

When such meeting shall be opened. 1821, 115, § 3.

**SECT. 16.** The selectmen, or other officers authorized and required by the constitution and laws to preside at any such meeting, shall then and there have all the powers of moderators of town meetings, as provided in chapter five, and it shall be their duty to refuse the vote of any person not qualified to vote.

Presiding officers empowered as moderators. 1821, 115, § 5.

**SECT. 17.** If the selectmen, or a majority of them, be absent from any such meeting duly warned, or, being present, shall neglect or refuse to act as such, and to do all the duties required of them at such meeting, the qualified voters at such meeting may choose so many selectmen pro tempore, as may be necessary, to constitute, or to complete the number competent to do the duties.

When selectmen pro tem. may be chosen. 1833, 81, § 1.

**SECT. 18.** During the choice of such selectmen pro tempore, any selectman present may act as moderator; if there be no selectmen present, or in case those present should neglect or refuse to act as such, the town clerk shall preside; and the person so acting or presiding shall have all the powers, and discharge the duties of a moderator.

Who shall preside at such choice. 1833, 81, § 1.

## CHAP. 6.

Duties of selectmen pro tem.  
1833, 81, § 1.

SECT. 19. The selectmen pro tempore, having accepted the trust, shall be sworn faithfully to discharge the duties of the said office, so far as relates to such meeting and election; and, in making a record and return of the votes, as the constitution or laws may require, and in all matters incidental to the trust, shall have the powers of permanent selectmen, and be subject to the same duties and liabilities.

What votes may be offered on one list.  
1831, 518, § 3.  
1833, 109, § 1.

SECT. 20. At every meeting for the choice of governor, senators, representatives, and other public officers, requiring the like qualifications in the electors, the selectmen, or other officer presiding, shall require the qualified electors to give in their votes, for the officer or officers to be chosen, on one list or ballot, or so many of such officers, as the person voting may determine to vote for; designating the intended office of each person voted for; provided, that, if the meeting so decide, they may vote for the representative or representatives to the state legislature on a separate ballot.

Check lists and suitable ballot boxes to be used.  
1821, 115, § 1, 7, 15.  
1833, 348, § 1, 3, 4.

SECT. 21. The selectmen, or other officers presiding at any election, as aforesaid, shall keep and use the check list required by this chapter, at the polls, during the election of any of the officers aforesaid; and they shall also have and use suitable ballot boxes, to be furnished at the expense of the town; and no vote shall be received, unless delivered by the voter in person, nor until the presiding officer or officers shall have had opportunity to be satisfied of his identity, and shall find his name on the list, and mark it, and ascertain that his vote be single.

Of votes marked or on colored paper.  
1831, 518, § 3.

SECT. 22. No ballot shall be received at any election of state or town officers, unless in writing or printing, upon clean white paper, without any distinguishing mark or figures thereon, besides the name of the persons voted for, and the offices to be filled, but no vote shall be rejected on this account, after it shall have been received into the ballot box.

When no choice of representative can be effected, the meeting to be adjourned.  
1833, 81, § 3.

SECT. 23. Whenever it satisfactorily appears to the selectmen, at any town meeting, held for the choice of representatives to the legislature, after a reasonable number of trials, that a choice cannot conveniently be effected, of any or all the representatives, to which the town is entitled, the presiding selectmen shall declare their judgment to the inhabitants at such meeting, within a reasonable time after the last trial, and notify them accordingly; of which decision and notice, the clerk shall then make a record, and in no case shall a new balloting commence after six o'clock in the afternoon.

Same subject.  
1833, 81, § 3.

SECT. 24. On such notice being given and recorded, or after six o'clock in the afternoon, there being no balloting then pending, the meeting shall be considered as adjourned to the same day of the next week following, and at the hour and place, for which the first meeting was notified, and the selectmen shall make proclamation thereof to the meeting.

Same subject.  
1833, 81, § 3.

SECT. 25. At such adjournment, a further trial or trials shall be had, and, if no choice then be made, the like proceedings shall be had, as are provided in the preceding section, and the meeting shall be considered as further adjourned to the same day and hour of the next week, at the same place, and such meetings and adjourn-

## CHAP. 6.

How authenticated.  
1831, 518, § 6.

the number of votes given to each, at such meeting, and that said copy contains all the facts, which were stated in the original return.

SECT. 31. The selectmen and town clerk, who were present at the meeting, and signed the original return, shall sign the certificate mentioned in the preceding section, designating their office against their names, as in the original return, and shall make oath, that said copy and certificate are true, before some justice of the peace of the county, who shall also make certificate of such oath on the same paper.

How sealed and returned.  
1831, 518, § 6.

SECT. 32. Such copy and certificates shall then be sealed up, and directed to the secretary of state, with the nature of the contents written on the outside, and the clerk of such town shall cause the same to be delivered into the office of the secretary of state, as soon as may be.

Of filling vacancies by towns not classed for representatives.  
1833, 81, § 4.

SECT. 33. Whenever the selectmen of any town, not classed with others as a representative district, shall, by any means, have knowledge, that the seat of any representative thereof has been vacated by death, resignation, or otherwise, they shall forthwith issue their warrant, giving at least seven days notice, for the meeting of the qualified electors of said town, to choose some person to supply such vacancy; and, at such meeting, the like proceedings shall be had, as at any meeting held on the second Monday in September for the like purpose; and, if necessary, the meeting may be adjourned, as provided in the twenty fourth and twenty fifth sections.

ARTICLE III. SPECIAL PROVISIONS AFFECTING CITIES, PLANTATIONS AND REPRESENTATIVE DISTRICTS.

Foregoing provisions extended to organized plantations.

SECT. 34. Except when otherwise specially provided, the regulations made in this chapter, in reference to towns and town officers, shall be applicable to organized plantations and their officers; and the assessors of any such plantation shall be considered selectmen, for all the purposes of this chapter, and liable to perform the duties, under the like penalties.

And cities except where express provision is made.  
Private laws.  
1832, 248, § 1,  
13.  
1834, 436, § 18.

SECT. 35. For all the purposes of electing the governor, senators, representatives to the state legislature, or any of the offices, except where other provision is expressly made, the inhabitants of any city in this state shall remain and continue a town, and shall possess all the rights and powers, and shall be subject to all the duties, obligations and liabilities of other towns.

Duties of city officers in elections.  
Private laws.  
1832, 248, § 1,  
13.  
1834, 436, § 18.

SECT. 36. The aldermen of any such city, by virtue of such office, shall be selectmen of said town, and the city clerk and assessors, shall, with the exception aforesaid, be town clerk and assessors, for the purposes of such election, and they shall be deemed to have been elected, as aforesaid, both city and town officers, and shall be duly sworn as town officers respectively.

Same subject.  
Private laws.  
1832, 248, § 1,  
13.  
1834, 436, § 18.

SECT. 37. The city constables shall, with the like exception, be deemed constables of the town, for the purposes of notifying all ward meetings for such elections, and of maintaining order in said meetings.

Electors in cities to meet in wards.

SECT. 38. For all the purposes mentioned in the fourteenth and twenty sixth sections, the inhabitants of cities shall meet, as the



**CHAP. 6.**

Three to constitute a quorum.  
1837, 300, § 3.  
When towns are classed, meetings of selectmen to examine votes for representative, how called.  
1831, 518, § 9.

**SECT. 45.** At any session required by the preceding section, any number of aldermen, if not less than three, shall be considered a quorum.

**SECT. 46.** Whenever two or more towns are classed, agreeably to the constitution of this state, for the purpose of choosing a representative to the legislature, the selectmen of the oldest town in such district shall appoint a time and place of meeting of the selectmen of the several towns in such district, and give reasonable notice thereof to such selectmen, for the purpose of examining copies of the lists of votes for representatives, in the manner prescribed by the constitution, where no time nor place of meeting has been otherwise established. When thus assembled, the selectmen of the towns so classed shall, by a majority of votes, reckoned by towns, determine the time and place for their future meetings in said district, for the purpose aforesaid, and such time and place shall continue fixed, until altered by a like vote.

If no choice be made, new meetings to be called.  
1832, 2, § 1, 2.

**SECT. 47.** Whenever, at any such meeting of selectmen, on comparing the lists of votes, it shall appear that no person has been elected, the selectmen of the several towns shall issue their warrant, in legal form, for another meeting, to be held three weeks after such first meeting, in their respective towns, at the same hour, and at the same place; and the selectmen of such towns shall again meet, within four days after such second trial, as provided in the constitution. If, at such meeting of the selectmen, it shall still appear that no choice has resulted, the same proceedings shall be repeated every three weeks, until a choice shall be made and declared.

If a choice, copies of the lists to be furnished to the person elected.  
1823, 222.

**SECT. 48.** Whenever an election of a representative shall appear to the selectmen, assembled as aforesaid, to have been made, they shall deliver to the person, so elected, certified copies of the lists of votes, within ten days after election, or sooner, if required by the person so elected; but it shall not be necessary for the clerks of the towns to seal them up, nor to cause such copies to be delivered into the secretary's office.

If a vacancy happen, further proceedings.  
1833, 81, § 5.

**SECT. 49.** Whenever, in any district, the selectmen of the oldest town shall be duly notified, or be otherwise satisfied, that the seat of the representative of such district has been vacated, they shall, as soon as may be, leaving a convenient time for calling meetings in the several towns, appoint a day for another election to supply such vacancy, and shall notify the selectmen of the other towns, accordingly.

Same subject.  
1833, 81, § 5.

**SECT. 50.** The selectmen of the several towns shall call meetings upon the day appointed, and the like proceedings shall then be had, as is required by the constitution and laws, for the election of representatives on the second Monday of September, and shall meet, within four days thereafter, to examine the lists of votes, and if a choice be effected, shall deliver copies of the lists to the person elected, as provided in section forty eight; otherwise such proceedings shall be had, as are provided in section forty seven.

Of notice in contested elections.  
1825, 310.  
1830, 479.

**SECT. 51.** Whenever any person shall intend to contest, before the house of representatives of this state, the right of any person to his seat therein, who shall have been duly returned as a member thereof, he shall notify the person, so returned, of such intention, at least twenty days before the first Wednesday of January, by

**CHAP. 6.** one, or shall wilfully receive any vote prohibited by the twenty second section, they shall severally forfeit not less than fifty, nor more than one hundred dollars.

ing illegal votes.  
1831, 518, § 3.  
1838, 343, § 1, 3.  
Penalties in the two preceding sections, how recovered.  
1831, 518, § 3.  
1838, 343, § 1, 3.

**SECT. 57.** The penalties in the two preceding sections shall be recovered, in an action of debt, in the name, and to the use, of the inhabitants of the town or plantation where the offence is committed; to be commenced and prosecuted to final judgment, at the request of any qualified voter in such town or plantation, by the treasurer thereof, unless he be one of the delinquent officers, and in that case, by one of the constables.

Penalties for neglect of requirements of sections 30, 31 and 32.  
1831, 518, § 6.

**SECT. 58.** If any selectman or other officer of any city, town or plantation, or selectman or other officer thereof, chosen pro tempore, shall wilfully neglect or refuse to perform the duties required by the thirtieth, thirty first and thirty second sections, on notice of the loss and destruction of any such return, as is therein described, he shall forfeit not less than one hundred, nor more than five hundred dollars, to be recovered by indictment, to the use of the state.

Also for false certificates in such case.  
1831, 518, § 6.

**SECT. 59.** Any such selectman, or other officer, whether permanent or pro tempore, who shall, in such case, make a false certificate, and make oath to the truth thereof, shall, on conviction thereof, suffer the pains and penalties provided against the crime of perjury, in section one, of chapter one hundred and fifty eight, and be also disqualified from holding any office under the constitution and laws of this state, for ten years.

Neglect of person entrusted with returns.  
1831, 518, § 7.

**SECT. 60.** Every person, to whom the returns of votes of any city, town, or plantation, for governor, senators, or representatives in congress, shall be entrusted, by the clerk thereof, for the purpose of forwarding them to the office of the secretary of state, who shall wilfully neglect to use all proper means for the delivery thereof, within the time required by the constitution and laws, shall forfeit, for such neglect, not less than one hundred, nor more than five hundred dollars, to the use of the state, to be recovered by indictment, or be imprisoned in the county jail, for a term, not less than two, nor more than six months, at the discretion of the court having cognizance thereof.

County attorney's duty, when notified of the failure of any return.  
1831, 518, § 4.

**SECT. 61.** Every county attorney, who shall receive from the secretary of state a certificate, that the return of the votes of any town, city or plantation in his county, for governor, senators, or representatives in congress, has not been duly received at the secretary's office, shall immediately ascertain, so far as he may be able, by the default of what officer of such town, or other person, such neglect may have happened, and demand of such officer, or other person, if he finds such default wilful, or caused by culpable negligence, the sum or sums forfeited by such neglect; and, if the same be not immediately paid, prosecute such delinquent according to law; and all sums, thus recovered, shall enure to the use of the state.

Liability of town officers modified.  
1831, 518, § 5.

**SECT. 62.** In no case, shall any officer of any city, town, or plantation, incur any punishment or penalty, or be made to suffer in damages, by reason of his official acts or neglects, unless the same shall be unreasonable, corrupt, or wilfully oppressive; provided, that the neglect to prepare the list of voters, to deposit it in

**CHAP. 6.**

Same subject.  
1826, 333, § 1.

**SECT. 69.** The constable, to whom such order shall be delivered, shall thereupon seize all such liquors, carriages, vessels, and the materials of any such tent or booth, and hold and detain the same, until twenty four hours after the adjournment of the meeting, then to be delivered, on demand, to the person, from whom the said articles were taken, or to the lawful owner, on payment of three dollars for the safe keeping of the articles.

The same may  
be sold.  
1826, 333, § 2.

**SECT. 70.** If the same be not thus demanded, within twenty four hours after the seizure thereof, the same shall be exposed to sale by auction, by the constable seizing them, after forty eight hours notice of the time and place of sale shall have been posted up in two or more public places in such town or plantation, unless in the mean time redeemed, by payment of said sum, and the reasonable expense of advertising.

How avails of  
sale may be dis-  
posed of.  
1826, 333, § 2.

**SECT. 71.** The proceeds of the sale, after deducting the afore-said expenses, and the charges of sale, to be taxed as on a sale of personal property taken on execution, shall be paid over to the person, from whom such articles were taken, or the lawful owner thereof.

**CHAPTER 7.****OF THE SECRETARY OF STATE.****SECT. 1.** Secretary's oath and duties.

2. Acting secretary, in case of vacancy.
3. Bonds required of secretary and acting secretary.
4. Secretary to give notice of appointments, and deliver commissions.
5. Annual certificates of duties paid on commissions.
6. Distribution of the laws.
7. To prepare commissions for the governor's signature.

**SECT. 8.** Registry of commissions delivered, and certificates of qualification filed.

9. Bills to be engrossed under his direction.
10. What proceedings to be had, when commissioner of the treasury is appointed.
11. Blank election returns to be furnished to towns.

Secretary's  
oath and duties.  
1823, 212.

**SECTION 1.** The secretary of state shall take and subscribe the oath or affirmation prescribed by the constitution, and shall keep his office at the seat of government, and shall keep and preserve in such office, at the expense of the state, all the records, as required by the constitution, and have the custody of the state seal.

Acting secre-  
tary in case of  
vacancy.  
1822, 196.

**SECT. 2.** When a vacancy shall happen in the office of secretary, in the recess of the legislature, by death, resignation, or otherwise, the governor, with advice of the council, shall appoint a suitable person to act as secretary of state, until one shall be elected by the legislature, and he shall take the oath required to be taken by the elected secretary; and the person thus appointed shall have the same compensation, to be paid quarter yearly, as the secretary of the state would be entitled to, in proportion to the time, such person shall perform the duties of his appointment.

CHAP. 7.  
furnished to  
towns.  
1833, 84.

blank forms for election returns, when not taken and receipted for by the members of the legislature, or by some other person, by the written request of one or more of the officers of the said cities, towns or plantations, by seasonably delivering such blanks in packages, directed to such cities, towns and plantations, to the sheriffs of the several counties, to which such cities, towns and plantations, respectively belong: and such sheriffs shall forthwith deliver the same to the selectmen, assessors, or the clerks of such respective corporations, taking a receipt for the same: and if such secretary or any sheriff shall neglect his duty, in violation of this section, he shall forfeit and pay a penalty of one hundred dollars.

## CHAPTER 8.

### OF THE TREASURER OF THE STATE.

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| <p>SECT. 1. Office at the seat of government.<br/>2. Amount of his bond, \$150,000.<br/>3. Condition thereof.<br/>4. Bond to be left with secretary.<br/>5. Treasurer may be removed on complaint of sureties in certain cases.<br/>6. Acting treasurer, in case of vacancy.<br/>7. Annual statement of certain debts due the state, and of names of sureties on sheriffs' bonds.</p> | <p>SECT. 8. Warrants for assessing taxes to be transmitted to assessors.<br/>9. Warrants for delinquencies.<br/>10. Annual report of receipts and expenditures.<br/>11. Also of delinquent officers.<br/>12. Of county treasurers' accounts.</p> |
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Office at the  
seat of govern-  
ment.

Amount of his  
bond, \$150,000.  
1820, 165, § 1.

Condition  
thereof.  
1820, 165, § 1.

SECTION 1. The treasurer of the state shall keep his office at the seat of government.

SECT. 2. He shall give the bond, which is required by the constitution, in the penal sum of not less than one hundred and fifty thousand dollars, to the state of Maine, with good and sufficient sureties residing in the state.

SECT. 3. The condition of the bond shall be for the faithful discharge and performance of all the duties of his office, and for the fidelity of all persons by him employed, and entrusted with any of the concerns of such office, and that during his continuance in office, he will not engage in trade or commerce, or as a broker, agent, or factor, for any merchant or trader; and that he, or his executors, administrators, or sureties, or their executors or administrators, shall render a just and true account of all his agents' and servants' doings and transactions in the office to the legislature, or such committee as they shall appoint, on the first Wednesday of January, annually, and previous to the choice of a new treasurer, and at any other time, when required by the legislature, or the governor and council; and that he will settle and adjust said account, and faithfully deliver over to his successor in office, or to such person as the legislature shall appoint, all moneys, books, property, and appertinances of the said office, in his, or any of his agents' possession, and pay over all such balances found due, on such adjustment.

CHAP. 9.

**CHAPTER 9.**

OF THE TENURE OF OFFICES.

SECT. 1. Tenure of offices, when not provided for by the constitution. | SECT. 2. Certain officers excepted.

Tenure of offices, when not provided for by the constitution. 1824, 257.

SECTION 1. All civil officers, who shall be appointed by the governor and council, whose tenure of office is not otherwise provided for, or limited by the constitution, otherwise than during the pleasure of the governor and council, shall hold and exercise their respective offices for the term of four years and no longer, unless re-appointed; subject, however, to removal at any time, within said term, at the discretion of the governor and council.

Certain officers excepted. 1824, 257.

SECT. 2. But the preceding section shall not be construed to extend to ministers of the gospel, who are, and may be, appointed to solemnize marriages; or to such persons as are or may be commissioned by the governor, before whom certain judicial, executive and civil officers are required by law to take and subscribe the oaths or affirmations, required by the constitution.

**CHAPTER 10.**

OF QUALIFICATION OF OFFICERS.

1821, 104, § 1.

The justices of the supreme judicial court, the attorney general, secretary, treasurer, adjutant general and quarter master general, shall take and subscribe the oath or affirmation required by the constitution, before the governor and council, when in session, and, in their recess, before any two members of the council; and every other person elected, or appointed, or commissioned, to any judicial, executive, or civil office, shall take and subscribe the same before any one member of the council, or before any one of the magistrates commissioned by the governor for that purpose, excepting in cases where the constitution has otherwise provided.

**CHAPTER 11.**

OF REGISTERS OF DEEDS.

<p>SECT. 1. Present registers to continue.</p> <p>2. Mode of choice by counties, or districts.</p> <p>3. Same subject. Term of office.</p> <p>4. Oath and bond.</p> <p>5. Bond, when county treasurer is register.</p>	<p>SECT. 6. Further proceedings, when no choice is made.</p> <p>7. Western district in Lincoln county.</p> <p>8. Eastern district in the same county.</p> <p>9. Western district in Oxford county.</p> <p>10. Clerk of the courts to be register, in case of vacancy.</p>
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**CHAP. 11.**

shall continue to compose and constitute a district for the registry of deeds, and be called the eastern district of Lincoln county, and the register shall keep his office at Thomaston.

Western district in Oxford county. Mass. laws. Feb. 26, 1806.

**SECT. 9.** The towns of Hiram, Porter, Brownfield, Denmark, Fryeburg, Sweden, Lovell, Stoneham and Stow, in the county of Oxford, shall continue to compose and constitute a district for the registry of deeds, and be called the western district of the county of Oxford; and the register shall keep his office at Fryeburg.

Clerk of the courts to be register in case of vacancy. 1825, 287, § 1.

**SECT. 10.** In case of vacancy in the office of register, in any county or registry district, the clerk of the judicial courts of the county, within which such vacancy may be, being first sworn to the faithful discharge of his duty, shall perform all the duties and services required of a register of deeds, during such vacancy; and be entitled to the same compensation, and subject to the like liabilities, as a register of deeds.

In certain cases, clerk may appoint a substitute. 1825, 287, § 2.

**SECT. 11.** In any county, where there are or may be, two or more registry districts, such clerk shall have power to appoint some suitable person under him, to take charge of, and perform the duties of said office, in the district or districts, in which the registry is not kept in the shire town, during such vacancy.

Substitute to be sworn. 1825, 287, § 2. Clerk to be responsible.

**SECT. 12.** The person so appointed shall be sworn to the faithful discharge of the duties of his appointment, and said clerk shall be responsible, in all cases for the doings of such person.

How vacancies may be filled. 1821, 98, § 5.

**SECT. 13.** For the purpose of supplying such vacancy, by a new election of a register, the chairman of the county commissioners shall issue his warrant to the selectmen of the towns, and assessors of the plantations, in said county, or registry district in such county, wherein the vacancy may exist, directing them to convene the qualified voters in the towns and plantations in such county or district, to proceed to the choice of some suitable person to fill the vacancy.

County commissioners to examine returns. 1821, 98, § 5.

**SECT. 14.** The chairman of the commissioners shall make his warrants returnable at a day certain, and notify the other county commissioners to attend at the return day, who shall examine the returns made, as directed, and the person having the majority of votes, after being duly sworn, and having given bond as aforesaid, shall be the register until the time, by law appointed, for the next election of register throughout the state.

Removal in case of misconduct or incapacity. 1821, 98, § 4.

**SECT. 15.** Whenever, on presentment of the grand jury, or information of the attorney general, to the supreme judicial court, any register of deeds shall, by default, confession, demurrer, or verdict, after due notice, be found guilty of misconduct in his office, or incapable of discharging its duties, said court shall enter judgment, that he be removed from office, and issue a writ to the sheriff, to take possession of all the books and papers belonging to the office, and deliver them to the clerk of said court, that he may perform the duties of register of deeds, in the manner prescribed in the tenth and eleventh sections of this chapter.

Quality of paper for records. 1821, 109, § 2.

**SECT. 16.** The records, in each registry office, shall be made and entered on paper of a firm texture, well sized and finished, the principal ingredient of which shall be linen.

Of deeds left to be recorded. 1821, 98, § 6.

**SECT. 17.** Every register shall, at the time of receiving any deed or instrument to be recorded, make a memorandum thereon, of the

**CHAP. 12.**

Oath, bond and tenure of office. 1821, 99, § 1. 8 Mass. 275.

**SECT. 4.** The person having a majority of the votes, and accepting the office, shall be sworn to the faithful discharge of the trust before said commissioners, or any two justices of the peace, and give bond, with sufficient sureties, approved by the commissioners, in writing, under their hands, on said bond, in such penal sum as the commissioners shall order, to the clerk of the commissioners in the same county, and to his successor in that office, and shall hold his office for one year, and till a successor shall be chosen and qualified as above mentioned.

In certain cases to be appointed by the county commissioners. 1821, 99, § 1.

**SECT. 5.** If no person shall have a majority of all the votes returned, or if any person chosen shall decline to accept the office, and also in case of a vacancy in the office from any cause, said commissioners may appoint a suitable person of the county to that office, who, having accepted the trust, given bond, and being duly sworn as prescribed in the preceding section, shall be treasurer for the remainder of the year, and until some person shall be chosen and qualified as provided in this chapter.

Persons disqualified from holding the office. 1821, 99, § 4.

**SECT. 6.** No person holding the office of attorney general, or attorney for the state within the county, nor any justice of the district court, clerk of said court, or sheriff of said county, shall hold the office of county treasurer.

Of the treasurer's disbursements, accounts and compensation. 1821, 99, § 2.

**SECT. 7.** The treasurer shall apply all moneys received by him for the use of the county, in defraying the expenses of it, as the county commissioners, the district court, and the supreme judicial court, shall, according to law, by their written order, direct; and each treasurer shall account with the commissioners of the county, of which he is treasurer, for all receipts and payments, and they may allow him a reasonable compensation for his services.

To enforce county taxes. 1821, 99, § 3.

**SECT. 8.** Each county treasurer is empowered to enforce the payment of all county taxes, assessed by direction of law, by the same rules, which are prescribed for the state treasurer to observe in enforcing the payment of state taxes.

His duty as to bills of cost against the state. 1821, 82, § 5.

**SECT. 9.** Every county treasurer shall, within two months after the rising of the supreme judicial court, transmit to the state treasurer an account on oath, charging the state with all bills of costs taxed and allowed by said court, and by the district court, when holden in the county whereof he is treasurer, and the certificate of the clerk of said courts shall be a sufficient voucher.

Same subject. 1821, 99, § 5.

**SECT. 10.** The costs in all civil actions, in the name of the state, on scire facias, or other process, which may be paid before execution issued, shall be paid to the clerk of the court where the suit is pending, and by him be paid over, without any deduction, to the treasurer of the county, who shall account for, and pay the same to, the state treasurer, as in case of adjustment of accounts by county treasurers, of fines, penalties, forfeitures and costs, in criminal cases.

Of his commissions. 1821, 82, § 5.

**SECT. 11.** He may charge a commission of five per cent. on all fines, forfeitures and costs, received and paid by him, and shall give credit for all fines, forfeitures and costs, accruing to the state, and by him received, and pay the balance due to the state, if any, to the treasurer thereof.

Balance to be paid to the state treasurer. Penalty for his

**SECT. 12.** For the neglect of any duty required in the three

CHAP. 12.

Copy of sheriffs' account to be transmitted to the secretary of state. 1820, 445, § 6.

Treasurer's account to be transmitted to the secretary of state with the county estimates. 1821, 97, § 2.

To account for money or effects of the county, annually. 1821, 97, § 3.

Expenses of keeping poor convicts in prison. 1821, 82, § 9.

Treasurer to account for money received of the U. States for use of jails. 1821, 110, § 16.

SECT. 22. Each county treasurer, at the expense of his county, shall make out and transmit to the secretary of state, within ten days after the first day of January, annually, a true and attested copy of the account, rendered and returned to him by the sheriff of such county, showing the amount thereof retained by said sheriff, and the amount paid over to such treasurer.

SECT. 23. Every county treasurer shall prepare and deliver his account as treasurer, annually, to the close of every year, to the clerk of the county commissioners, to be by him enclosed, with the estimates for county taxes made by said commissioners, and transmitted to the secretary of state.

SECT. 24. Every treasurer, holding any money or effects belonging to his county, shall annually, and oftener if required, exhibit an account thereof to the county commissioners, for adjustment.

SECT. 25. Each treasurer may charge to the state, the several sums he shall pay from the treasury, to the jailer of the same county, for keeping and supporting poor convicts in prison, which had been allowed to him by the county commissioners, and may also charge two and a half per cent for his services in this particular duty, and the same shall be included in his account to be rendered to the treasurer of the state as aforesaid.

SECT. 26. Each county treasurer is authorized and directed to receive, for the use of the county, all such moneys as the United States have agreed to pay for the use and keeping of county jails, and to account for the same according to law.

CHAPTER 13.

OF NOTICES OF PETITIONS TO THE LEGISLATURE.

SECT. 1, 2. How notice of petition may be given. SECT. 3. Either mode as valid, as if ordered by the legislature. 4. Fees of the officer.

How notice of petition may be given. 1821, 166, § 1. 8 Greenl. 365.

SECTION 1. When a petition is presented to the legislature by any corporation or individual, and the rights of other corporations or individuals may be affected by the grant of the prayer thereof, the petitioner may cause notice to be given to those interested, if known, by serving them with an attested copy of the petition, at least sixty days before the commencement of the session of the legislature, by a sheriff, deputy sheriff, coroner or constable.

Same subject. 1821, 166, § 1.

SECT. 2. When those, whose rights may be affected as before mentioned, are not known, a copy of the petition shall be published in the newspaper published by the printer to the state, three weeks successively, the last publication to be thirty days at least before the commencement of the next session of the legislature.

Either mode as valid, as if ordered by the legislature. 1821, 166, § 1.

SECT. 3. Notices, given in either of the modes before described, shall be as valid, as if ordered by the legislature after the presentment of such petition.



- CHAP. 14. SECT. 41.** Forfeiture by assessors refusing to be sworn.
42. New assessors to be chosen in such case.
  43. Plantations subject to the same penalties, as towns.
  44. Organization of plantations for the purpose of taxation.
  45. Forfeiture for refusing to serve a warrant for meeting of the same.
  46. Of their officers.
  47. Assessors to take a list of polls and valuation of property.
  48. Plantation meetings.
  49. Officers liable, if they neglect to be sworn.
  50. Taxes on dogs in Portland and Eastport.
  51. Lands to be assessed to the tenants or owners, in the town where situated. Persons part owners with others may be taxed separately on furnishing a description of their separate interests.
  52. Lands of deceased persons before distribution may be taxed to executors, &c.
  53. Supplementary assessments may be made to correct mistakes, notwithstanding the overlay and disproportion on polls.
  54. Notice to be given to assessors of changes of ownership, &c. Also of the interests of tenants in common, &c.
  55. Stock employed in factories to be taxed where manufactured. Lien on the same.
  56. Assessors responsible for their faithfulness only.
- ARTICLE III. OF THE COLLECTION OF TAXES IN INCORPORATED PLACES.**
57. Form of assessors' warrant for collection of state taxes; and of the certificate of assessment.
  58. Form of warrant for county and town taxes.
  59. Provision in case of loss of warrant.
  60. Of the choice of collectors.
  61. Collectors' fees in case of distress or commitment.
  62. Constable or collector required to serve warrant.
  63. Also required to give bond.
  64. Provision in case of the death of any collector.
  65. Powers of plantations to choose collectors, &c.
  66. Of distress, for nonpayment of taxes, on goods and chattels.
- SECT. 67.** Overplus to be restored, with an account.
68. Body of delinquent may be arrested for neglect twelve days after demand.
  69. If party is like to abscond, arrest may be made immediately.
  70. In case of intended removal, a tax payable in instalments may be anticipated.
  71. When new collectors or constables are elected, the former officers to perfect their collections.
  72. Mode of distraining shares in corporations.
  73. Duty of corporation officers to furnish certificates.
  74. Collection of persons removing to other parts of the state.
  75. In what cases collector may sue for taxes in his own name.
  76. Collector to certify unpaid assessments on real estate to town treasurer.
  77. Treasurer to record and advertise the same.
  78. What description when name of town has been altered.
  - 79, 80. Mode of advertising.
  81. Conditions on which taxes may be discharged within four years.
  82. Treasurer to advertise again after four years.
  83. Conditions on which taxes may then be discharged.
  84. Lien of the town on such real estate.
  85. Land forfeited after five years from the assessment. Towns may release on certain conditions.
  86. Treasurer to leave certificate with register of deeds.
  87. How the title of the town may be proved.
  88. Remedy for a party illegally assessed.
  89. Two years more allowed for advertising, if before omitted.
  90. Treasurer's receipt evidence of payment and redemption.
  91. Of distress on nonresident owners of improved land.
  92. Officer may sue after two months notice in writing.
  93. Collector may demand aid. Penalty for refusing.
  94. Collector to exhibit his account to selectmen, at least once in two months.
  95. Forfeiture for neglect thereof.
  96. Proceedings when collector removes from the state, or is about

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ARTICLE V. SPECIAL PROVISIONS.

SECT. 147. Affidavit as to posting notices to be proof in cases of sales of land by sheriff, &c.

148. Remedy for a person, whose estate is taken pursuant to the thirty ninth section.

SECT. 149. Event of sale not conclusive as to value.

150. Treasurer's warrants, returnable in three months and renewable.

151. Sheriffs' powers the same on alias and pluries warrants.

ARTICLE I. OF TAXES ON UNINCORPORATED PLACES.

State taxes on tracts of land not otherwise taxed to be advertised by the state treasurer. 1836, 201, § 1.

SECTION 1. Whenever a state tax shall be imposed, or assessed by the legislature on any township or tract of land not taxable by the assessors of any town or organized plantation, it shall be the duty of the state treasurer to cause the said assessment to be published in the newspaper of the printer to the state, three weeks successively, the last publication to be within three months from the day, on which such assessment was made by the legislature.

Lien on the land for such taxes. 1836, 201, § 1.

SECT. 2. The said land shall be held liable to the state for the payment of all such state taxes, and for the repayment of all such sums, as the state may have paid, to discharge any taxes or rates assessed by county commissioners, together with the interest thereon, for the term and at the rate hereinafter specified.

County taxes on such lands to be notified to the state treasurer. 1836, 201, § 2.

SECT. 3. Whenever any rate or tax, on any such township or tract of land, as is mentioned in the preceding sections, shall have been duly assessed, or ordered by the county commissioners, whether such assessment be for the purpose of defraying the ordinary county expenses, or for making, or keeping in repair, highways through, or within the limits of such township or tract, it shall be the duty of the county treasurer, immediately to notify the state treasurer of the same; specifying the tract assessed, and the time and amount of such assessment.

Of the state treasurer's proceedings. 1836, 201, § 2.

SECT. 4. It shall be the duty of the state treasurer forthwith to give credit to said county treasurer for said sum, on the books of the state treasury, and forward a certificate of the same to the county treasurer; and he shall cause said assessment to be published in the same manner, as is provided in case of the assessment of a tax by the legislature.

Appropriations for same by the legislature. 1836, 201, § 2.

SECT. 5. The state treasurer, in his annual report, shall present to the legislature a list of all such outstanding credits, in order that suitable appropriations may be made for payment thereof.

Governor to draw his warrant therefor. 1836, 201, § 2.

SECT. 6. The governor, with advice of the council, having drawn his warrant therefor, the state treasurer shall forthwith pay the same to said county treasurer, and take his receipt for the same.

County treasurer precluded from selling such lands. 1836, 201, § 2.

SECT. 7. The county treasurer shall be precluded from advertising the same, or causing to be sold such township or tract of land for any tax, for which he shall have received credit as aforesaid, on the books of the treasury.

Within what time the owner may redeem the same, and on what terms. 1836, 201, § 3.

SECT. 8. The owner of any such township or tract of land, assessed as aforesaid by the legislature, or county commissioners, and advertised as aforesaid by the state treasurer, may, at any time within four years from the time of publishing said assessment, redeem the same, by paying into the treasury of the state, the amount of all state taxes, and all the amounts due thereon, which the state may have paid or credited to the county treasurer, for any taxes or rates asses-

**CHAP. 14.** before the first day of January, annually, to be by him laid before the legislature.

County commissioners warrant to the assessors of towns.  
1821, 73, § 1.  
20 Pick. 418.

**SECT. 14.** The county commissioners of each county shall issue their warrant to the assessors of each town and organized plantation in the county, requiring them forthwith to assess, in due form of law, the sum apportioned and set on such town or plantation, and to commit the assessment to the collector or constable for collection according to law.

No town tax, except for sums legally voted by the town.  
21 Pick. 64.

**SECT. 15.** For the purpose of the legal assessment of any town, plantation, or parish tax, the sum so assessed must have been granted and voted for a legal object, at a meeting of the inhabitants of such town, and of the inhabitants or members of such parish, being legally qualified voters, called and notified in the manner prescribed in chapters five and eighteen.

Of assessors of towns.  
1821, 116, § 1.  
1 Pick. 109.

**SECT. 16.** In each town, there shall be annually chosen three or five persons, to be assessors of all state, county and town taxes, which they shall be authorized to assess, in the course of the year, for which they are chosen.

Assessors to give notice before making any assessment.  
1821, 116, § 12.  
8 Pick. 390, 494.

**SECT. 17.** The assessors of each town, a convenient time before making any assessment, shall give seasonable notice, in writing, to the inhabitants, by posting up notifications in some public place in the town, or notify the respective inhabitants in such other way, as the town may at its annual meeting direct, to make, and bring in to them, true and perfect lists of their polls and all their estates, real and personal, not by law exempted from taxation, which they were possessed of at such periods, as the legislature may from time to time order and direct.

Consequences of not bringing in lists to assessors.  
1821, 116, § 12.

**SECT. 18.** If any person, after such notice, shall not bring in such lists, he shall be thereby barred of his right, to make application to the county commissioners for any abatement of the assessment on him, unless such person shall make it appear to such commissioners, that he was unable to offer such list at the time appointed.

Assessors may require such lists to be sworn to.  
1821, 116, § 12.

**SECT. 19.** The assessors, or either of them, may require the person presenting such list to make oath that the same is true, which oath either of the assessors may administer; and such list, being exhibited on oath, shall be a rule for that person's proportion of the tax.

Assessors may make abatements on application within one year.  
1821, 116, § 13.  
6 Pick. 98.

**SECT. 20.** The assessors, on application, within one year from the assessment, may make such reasonable abatement, as they think proper.

Right of appeal to the county commissioners.  
1821, 116, § 13.

**SECT. 21.** If the assessors shall refuse to make any abatement, the complainant may apply to the county commissioners, at their next meeting, and, should they be of opinion that he is overrated, he shall be relieved by them, and be reimbursed out of the town treasury, so much as the commissioners shall see cause to abate, of the tax upon him, with incidental charges. And the commissioners may require the assessors or town clerk to produce the valuation, by which the assessment was made, or a copy of it.

Taxes to be assessed according to the rules of the last act,

**SECT. 22.** The assessors, so chosen and sworn, shall assess upon the polls and estates within such town, their due proportion of any tax, according to the rules in the then last act for raising a state

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Proceedings thereupon.

Duty of such assessors to observe warrants of state and county treasurers, [county commissioners. See § 14.] 1821, 116, § 5. 20 Pick. 418.  
Penalty on assessors neglecting to assess any state tax. 1821, 116, § 5.

Penalty for neglecting to assess any tax required by warrant of county treasurers, [county commissioners. See § 14.] 1821, 116, § 5. 20 Pick. 418.  
When the assessors may be arrested.

Other assessors to be appointed by county commissioners in case of such neglect. 1821, 116, § 5.

How the state treasurer may proceed, when towns neglect for five months to assess a state tax. 1821, 116, § 20.

and estates within the town, their due proportion, according to law, together with the said penalty, where the town makes default as aforesaid; and such sum, as shall answer their own reasonable charges for time and expense, in said service, not exceeding one dollar per day for each man; and shall issue a warrant, under their hands, for collecting the same, and transmit a certificate thereof to the treasurer of the state, with the name of the person, to whom the warrant is committed, and the assessors shall be paid their charges, as adjusted by the commissioners, out of the state treasury.

**SECT. 32.** All assessors, chosen or appointed as above provided, shall duly observe all such warrants, as they shall receive, while in office, from the state treasurer, or the treasurer of the county, in which they reside, pursuant to any act of the legislature, imposing it for the use of the state, or granting it for the use of the county.

**SECT. 33.** If the assessors of any town shall refuse or neglect to assess any state tax, apportioned on such town, and which they were required by the state treasurer's warrant to assess, they shall forfeit and pay the full sum mentioned in such warrant, to the use of the state, and the treasurer of the state shall issue his warrant to the sheriff of the county, to levy the said sum, by distress and sale of the estate, real and personal, of such deficient assessors.

**SECT. 34.** If such assessors shall neglect to assess the amount of the county tax, required in the county treasurer's warrant to them to assess, they shall forfeit that sum to the use of said county, and the same shall be levied by sale of the estate, real and personal, of such assessors, by virtue of a warrant issued by the county treasurer to the sheriff of the county, for that purpose.

**SECT. 35.** If the sheriff cannot, on either of said warrants, find property of said assessors to satisfy the sum due thereon, he may arrest their bodies on both or either of said warrants, and imprison them, until they pay the same.

**SECT. 36.** The county commissioners of the county, in which such assessors dwell, shall forthwith appoint other proper persons to be assessors of such state and county taxes, according to the directions of the warrants from the respective treasurers; and such newly appointed assessors shall be sworn to perform the same duties, and be liable to similar penalties, as the former assessors.

**SECT. 37.** If the inhabitants of any town, from which a state tax has been required, but is unpaid, or shall be required, shall neglect, for the space of five months, after having received the state treasurer's warrant for assessing any state tax, to choose assessors to assess the same, and cause the assessment thereof to be certified, as the law requires, to such treasurer for the time being, such treasurer shall issue his warrant, under his hand, to the sheriff of the same county, who shall proceed to levy such sums of the property, real or personal, of any of the inhabitants of such town, observing the regulations provided for satisfying warrants against deficient collectors, as hereinafter prescribed. But if the assessors of said town shall, within sixty days from the receipt of a copy of such warrant from the officer, deliver to such officer a certificate, according to law, of the assessment of the tax or taxes required by the warrant, and pay the officer his legal fees, he shall forthwith transmit the

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Organization of plantations for the purpose of taxation. 1821, 116, § 8. 1837, 275.

tion shall be subject to the same penalties, as towns deficient in the same respect, and shall be proceeded with in the same manner.

**SECT. 44.** When any state or county tax shall be laid on any unincorporated place, the county commissioners of the county, in which such place is situated, on being notified of such tax by the treasurer of the state, or of such county, at their next regular session, may, at their discretion, issue a warrant to one of the principal inhabitants of such unincorporated place, commanding him to notify the other inhabitants to assemble, on a day, and at a place, designated in such warrant, and choose all necessary plantation officers, who shall be sworn according to law; and a copy of such warrant shall be served on said inhabitants, by being posted in two public places in the intended plantation, fourteen days before the day of meeting; and the officer serving the warrant shall return the same, with his doings thereon, to such meeting; or such incorporation may be obtained on request of any of the inhabitants of such place, whether a tax is laid thereon or not, under a warrant from said commissioners, after due notice to said inhabitants, to shew cause, at the next meeting of said commissioners, which notice it shall be the duty of the petitioners to publish in some newspaper, to be designated by the commissioners, three weeks successively, the last publication to be two weeks at least before the said meeting of the commissioners; and the commissioners, if they see cause, may organize said inhabitants, within such territorial limits, as they shall deem proper, and may cause them to assemble, in manner as herein before provided. And, in either case, such plantation, so incorporated, shall possess all the powers, and be liable to all the duties, of other plantations, and the clerk shall forthwith notify the state and county treasurer of such organization.

Forfeiture for refusing to serve a warrant for meeting of the same. 1821, 116, § 8.

**SECT. 45.** The person, to whom such warrant shall be directed, shall obey the command therein, on penalty of forfeiting and paying the whole sum named and ordered in said warrant to be levied on such plantation, to be recovered by the treasurer, who issued the warrant.

Of their officers. 1821, 116, § 8.

**SECT. 46.** The said clerk, assessors and collectors shall be duly sworn, in the same manner as similar officers chosen by a town, and be entitled to the same compensation, unless otherwise agreed.

Assessors to take a list of polls and valuation of property. 1821, 116, § 9.

**SECT. 47.** The assessors, so chosen and sworn, shall thereupon take a list of the ratable polls, and a valuation of the estates of the inhabitants of the plantation.

Plantation meetings. 1821, 116, § 10, 11.

**SECT. 48.** The assessors of such plantations shall have power to issue their warrants for meetings of the inhabitants, in March or April annually, for the choice of all proper officers, who shall be sworn by the moderator, or some justice of the peace; and every moderator shall be bound to notify the plantation officers, to appear before some justice of the peace, within seven days from the time of their choice, to take the necessary oaths of office, on pain of incurring the penalty of ten dollars for his neglect.

Officers liable, if they neglect to be sworn. 1821, 116, § 11.

**SECT. 49.** Such plantation officer, who shall neglect to take the oath of office, when notified as aforesaid, shall be liable to the same penalties, as town officers so neglecting, to be recovered in the same manner.

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amount shall exceed the sum to be assessed, by more than five per cent., or alter the proportion of tax allowed by law to be assessed on the polls.

Notice to be given to assessors of changes of ownership, &c. 1826, 337, § 4.

**SECT. 54.** When assessors shall continue to assess any real estate to the person, to whom it was last assessed, such assessment shall be valid, though the ownership or occupancy may have been changed, unless, previous to such last assessment, notice is given of such change of ownership or occupancy, and of the name of the person, to whom the same had been transferred or surrendered; and a tenant in common, or joint tenant, may be considered sole owner, for purpose of taxation, unless he notifies the assessors what his interest is.

Also of the interests of tenants in common, &c.

Stock employed in factories to be taxed where manufactured. 1838, 347. Lien on the same.

**SECT. 55.** All stock, employed in factories, shall be taxed in the town or place where it is so manufactured, and the tax shall be so assessed against the person, who may have the possession of the same; and a lien shall be had upon the whole, or any part of said stock, for the payment of the tax, for one year after it shall be assessed.

Assessors responsible for their faithfulness only. 1826, 337, § 1. 2 Fairf. 136. 3 Fairf. 254. 15 Maine, 258. 4 Pick. 399. 5 Pick. 451. 7 Pick. 106. 15 Pick. 44.

**SECT. 56.** The assessors of towns, plantations, parishes and religious societies, shall not be made responsible for the assessment of any tax, which they are by law required to assess; but the liability shall rest solely with said corporations; and the assessors shall be responsible only, for their own personal faithfulness and integrity.

**ARTICLE III. OF THE COLLECTION OF TAXES IN INCORPORATED PLACES.**

Form of assessors' warrant for collection of state taxes. 1821, 116, § 17.

**SECT. 57.** The warrant to be issued by the selectmen or assessors, for the collection of the state rates or assessments shall be in substance as follows:

\_\_\_\_\_ ss. A. B. constable or collector of the town of \_\_\_\_\_ within the county of \_\_\_\_\_

Greeting.

In the name of the state of Maine, you are hereby required to levy and collect, of the several persons named in the list herewith committed unto you, each one his respective proportion therein set down, of the sum total of such list, it being this town's proportion of the state tax for the year 18—; and you are to transmit and pay in the same unto \_\_\_\_\_, treasurer of the state, or to his successor in that office, and to complete and make up an account of your collections of the whole sum, on or before the \_\_\_\_\_ day of \_\_\_\_\_. And if any person shall refuse or neglect to pay the sum, he is assessed in the said list, to distrain the goods or chattels of such person, to the value thereof; and the distress so taken, to keep for the space of four days, at the cost and charge of the owner; and if he shall not pay the sum, so assessed, within the said four days, then you are to sell at public vendue the distress so taken, for the payment thereof, with charges; first giving forty eight hours notice of such sale, by posting up advertisements thereof, in some public place in the town (or plantation, as the case may be); and the overplus, arising by such sale, if any there be, besides the sum assessed, and the necessary charges of taking and keeping the dis-

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Also required to give bond. 1821, 116, § 23. 1836, 212, § 1. 1 Greenl. 248.

Provision in case of the death of any collector. 1821, 116, § 23.

Powers of plantations to choose collectors, &c. 1821, 116, § 24.

Of distress, for non-payment of taxes on goods and chattels. 1821, 116, § 26.

Overplus to be restored, with an account. 1821, 116, § 26.

Body of delinquent may be arrested for neglect twelve days after demand. 1821, 116, § 26.

If party is like to abscond, arrest may be made immediately. 1821, 116, § 26.

In case of intended removal, a tax payable in instalments may be anticipated. 1821, 116, § 27.

**SECT. 63.** The assessors shall require such constable or collector to give bond for the faithful discharge of his duty, to the inhabitants of the town, in such sum, and with such sureties, as the selectmen shall approve; and bonds given by collectors of plantations shall be to the inhabitants thereof, approved by the assessors, conditioned that he will faithfully perform the duties mentioned in the warrant, for collection of said taxes.

**SECT. 64.** In case any constable or collector die before perfecting the collection of any assessment, the assessors, for the time being, of such town or plantation, shall appoint, at the charge of the same, some other suitable person to perfect the collection, and grant him a sufficient warrant for that purpose.

**SECT. 65.** All plantations, which, from time to time, shall be ordered by the legislature to pay any proportion of the public taxes, are hereby vested with all the powers, so far as relates to the choice of constables and collectors, and requiring bonds from the same, as in case of towns.

**SECT. 66.** If any person shall refuse to pay the sum assessed, as his proportion of any tax, the constable or collector, to whom such tax is committed, with a warrant to collect the same, is hereby authorized and directed to distress the person so refusing, by his goods and chattels; and the distress, so taken, to keep for the space of four days, at the expense of the owner, and if he do not pay the sum assessed on him, within that time, then the distress, so taken, shall be openly sold at vendue, by such officer, for the payment of such sum, notice of such sale being posted up in some public place in the same town, forty eight hours before the expiration of said four days.

**SECT. 67.** The officer, after deducting the amount of the tax and the expenses of sale, shall restore the overplus to the former owner, with an account in writing of the sale and charges.

**SECT. 68.** If the person, so assessed, shall, for the space of twelve days after demand of the same, refuse or neglect to pay said sum, so assessed on him, and shall neglect to show the constable or collector sufficient goods and chattels, whereby the sum may be levied, such constable or collector may arrest the body of the person, so refusing, and commit him to jail, till he shall pay the said sum, or be discharged by order of law.

**SECT. 69.** If, in the opinion of the assessors, there are just grounds to fear that any person, assessed as aforesaid, may abscond before the end of said twelve days, the constable or collector may demand immediate payment, and, on refusal, he may commit him as aforesaid.

**SECT. 70.** When any tax shall be made payable at two or more several days, and any person, being an inhabitant of any town at the time of making such tax, and being assessed thereunto, shall be about to remove from such town before the time fixed for any payment, the collector or constable may demand and levy the whole sum, which such person may be assessed in his list, though the time, for collecting any subsequent part of said tax, may not then have arrived: and, in default of payment, he may distress for the same, or take such other course as is provided in the sixty eighth section.

**CHAP. 14.** such advertisement, he shall express, not only the present name, but that, by which it was last known.

**Mode of advertising.** **SECT. 79.** In either case, he shall post the same in some convenient and conspicuous place in the same town, where the lands lie, and also advertise the same in one of the newspapers printed in the county, where the lands lie, or in an adjoining county.

**Same subject.** **SECT. 80.** The treasurer shall cause the advertisements aforesaid to be published, three weeks successively, within three months from the time the collector shall have certified to him the deficiencies, as aforesaid.

**Conditions on which taxes may be discharged within four years.** **SECT. 81.** Any person may discharge said taxes within four years from the date of the assessment, by paying to the treasurer the taxes, with interest, at the rate of twenty five per cent. per annum, from the date of the assessment, together with costs of advertising, which costs shall be ascertained by adding fifty per cent. to the sums paid the printer, and, if more than one parcel be advertised, by dividing the amount by the number of lots or parcels advertised.

**Treasurer to advertise again after four years.** **SECT. 82.** If any taxes on lands shall remain unpaid for the term of four years from the date of the assessment, the treasurer shall publish notice of the same in the public newspaper of the printer to the state, therein stating the amount of taxes, which have remained due for the space of four years, and the date of the assessment thereof, and that the land will be forfeited to the town, unless payment of said taxes be made within five years from the date of the assessment.

**Conditions on which taxes may be discharged.** **SECT. 83.** Any person may discharge said taxes, after notice given as mentioned in the eighty second section, and before the expiration of the five years therein named, by paying, as provided in section eighty one, with the addition of one dollar on each separate lot or parcel, for the notice last mentioned.

**Lien of the town on such real estate.** **SECT. 84.** All real estate shall be held liable to the town for the payment of all taxes legally assessed thereon, together with the interest and costs.

**Land forfeited after five years from the assessment.** **SECT. 85.** If any taxes, on any real estate as aforesaid, shall not have been paid to the treasurer of the town, within five years next following the date of the assessment, such real estate shall be wholly forfeited, and the title thereof shall vest in the town, free and quit from all claim by any former owner; and the same shall be held and owned by the town by a title, which is hereby declared to be perfect and indefeasible; and such town may, at an annual meeting, by vote, release lands so forfeited, or any part thereof, to the former owner, on his paying to the town all the taxes aforesaid thereon, with interest and costs, or so much thereof, as the town may deem just and reasonable.

**Towns may release on certain conditions.** **SECT. 86.** It shall be the duty of the treasurer of the town aforesaid, to leave with the register of deeds for the county or district, in which such land lies, within thirty days from the time of any forfeiture, a certificate, which shall be substantially as follows: I, \_\_\_\_\_, treasurer of the town of \_\_\_\_\_, hereby certify, that \_\_\_\_\_ was assessed, in the year \_\_\_\_\_, as the property of \_\_\_\_\_, in the sum of \_\_\_\_\_, by the assessors of said town, and the same remains unpaid; and, the term of five years having elapsed

**Treasurer to leave certificate with register of deeds.**



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men at least once in two months. 1821, 116, § 36. Forfeiture for neglect thereof. 1821, 116, § 37.

assessors of his town, a just and true account of all moneys received on the taxes committed to him, and produce the treasurer's receipts for moneys by him paid.

Proceedings when collector removes from the state, or is about to do so; and when treasurer has issued his warrant of distress. 1821, 116, § 38.

Warrant to new collector in such case. 1821, 116, § 38.

Penalty if the old collector refuse to give up his bills and pay over his collections. 1821, 116, § 39.

When collector becomes incapacitated, assessors to appoint another. 1821, 116, § 40.

Overpayments, if any, to be restored to such collector. 1821, 116, § 40.

Right of the assessors to demand the lists of persons in possession of them, in certain cases. 1821, 116, § 40. State treasurer may issue warrants of distress

SECT. 95. Any collector of taxes, neglecting to perform the duty required in the preceding section, shall forfeit two and a half per cent. on the sums committed to him to collect, to be recovered by such town.

SECT. 96. When a collector, having taxes committed to him to collect, has removed, or, in the judgment of the selectmen, assessors, or treasurer of a town, or committee or treasurer of a parish, is about to remove out of the state, before the time set in his warrants to make payment to such treasurers, respectively, or when the time has elapsed, and the treasurer has issued his warrant of distress, in either case, the selectmen of such town, or assessors of such plantation, or committee of such parish, may call a meeting of such town, plantation or parish, to appoint a committee to settle with such collector, for the money he has received on his tax bills, and demand and receive of him such bills, and discharge him therefrom, and, at said meeting, may elect another constable or collector.

SECT. 97. The assessors shall then make out a new warrant, and deliver the same, with said bills, to him, to collect the sums due on such bills, and such collector shall have the same power, in the collection thereof, as the original collector.

SECT. 98. If such collector or constable shall refuse to deliver the bills of assessment, and pay all moneys collected by him, and remaining in his hands, when duly demanded of him, he shall pay a fine of two hundred dollars, to the use of the town, plantation, or parish, as the case may be, and, besides, be liable to pay what shall remain due on said bills of assessment.

SECT. 99. Whenever any constable or collector of taxes is, or may become insane, or [*who*] has, or may have, a guardian, or may, by bodily infirmities, be incapable of doing the duties of his office, before completing the collection, the assessors may appoint some suitable person, a collector, to perfect such collection, and grant him a warrant for the purpose, and he shall have the same power, as the said disqualified collector or constable; but no person shall be so appointed to complete the collection, unless by his own request or consent.

SECT. 100. Whenever it shall appear, that such insane or disqualified constable or collector shall have paid to the treasurer, to whom he was accountable, a larger sum than the amount of moneys he has collected from the persons named in his list, the assessors, in their warrant to the new constable or collector, by them appointed, shall direct him to pay such overpaid sum to the guardian of such insane, or to the disqualified constable or collector.

SECT. 101. Such assessors, in the cases aforesaid, and also in case of the decease of a constable or collector, before perfecting his collection, may demand and receive the lists of assessment from any person having possession of the same, and deliver the same to the newly appointed collector.

SECT. 102. The state treasurer shall issue his warrant of distress against any constable or collector, to whom any tax has been

CHAP. 14. to be thereupon appointed in writing by assessors. 1821, 116, § 43. If executor, &c. neglect to settle, he may be chargeable with the whole sum committed to the deceased collector. 1821, 116, § 43. Treasurer to issue a warrant against delinquent collectors. 1821, 116, § 44.

Form of such warrant.

some person a collector, to perfect such collection, who is hereby empowered and required to execute such powers as were granted to the former collector.

SECT. 110. If such executor or administrator shall fail of making up and settling the account of what was received by the deceased, as before mentioned, within two months after accepting the trust, as aforesaid, in case he has sufficient assets in his hands, he shall be chargeable with the whole sum committed to the testator or intestate for collection.

SECT. 111. If the constable or collector of any town, plantation or parish, to whom any county, town, plantation or parish taxes have been committed for collection, shall neglect to collect and pay the same to the treasurer, named in the warrant of the assessors, by the time therein stated, such treasurer shall issue his warrant, returnable in ninety days, to the sheriff of the same county, or his deputy, who are directed to execute the same, and such warrant shall be in substance as follows :

A. B. treasurer of the \_\_\_\_\_ of \_\_\_\_\_, in said county, to the sheriff of the county of \_\_\_\_\_, or his deputy,

Greeting.

Whereas C. D. of \_\_\_\_\_ aforesaid, (addition) on the \_\_\_\_\_ day of \_\_\_\_\_ being a \_\_\_\_\_ of taxes granted and agreed on by the \_\_\_\_\_ aforesaid, had a list of assessments, duly made by the assessors of the \_\_\_\_\_ aforesaid, amounting to the sum of \_\_\_\_\_, committed to him, with a warrant, under their hands, directing and empowering him to collect the several sums in the said assessment mentioned, and pay the same to the treasurer of \_\_\_\_\_ aforesaid, by the \_\_\_\_\_ day of \_\_\_\_\_, but the said C. D. hath been remiss in his duty by law required, and hath neglected to collect the several sums aforesaid, and pay the same to the treasurer of the \_\_\_\_\_ aforesaid ; and there still remains due thereof the sum of \_\_\_\_\_, and the said C. D. still neglects to pay the same : You are hereby, in the name of the state, required, forthwith to levy the aforesaid sum of \_\_\_\_\_, by distress and sale of the estate, real or personal, of the said C. D., and pay the same unto the treasurer of the said \_\_\_\_\_, returning the overplus, if any there be, to the said C. D. And for want of such estate, to take the body of the said C. D., and him commit to the jail in the county aforesaid, there to remain, until he has paid the sum of \_\_\_\_\_, with forty cents for this warrant, together with your fees, or, that he be otherwise therefrom discharged by order of law ; and make return of this warrant to myself, or my successor, as treasurer of the said \_\_\_\_\_, within ninety days from this time, with your doings therein.

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, in the year one thousand eight hundred and \_\_\_\_\_.

Duty of sheriff in returning executions or warrants of distress. 1821, 116, § 45.

SECT. 112. On all executions or warrants of distress, that have been, or may hereafter be issued, by the state treasurer, or the treasurer of any county, town, plantation or parish, against any constable or collector, which have been, or may hereafter be, delivered to the sheriff of any county or his deputy, such sheriff or deputy shall make return of his doings unto the treasurer, who issued the same execution or warrant of distress, within a reasonable time after the

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Deficient officer entitled to the privileges of a debtor on a private execution. 1821, 116, § 47.

His accounts to be adjusted with the assessors, on his making proper exhibits, and delivering a copy of assessments. 1821, 116, § 48.

Town to choose a new collector. 1821, 116, § 48.



Collector refusing to deliver up assessments, &c. to be committed to jail. 1821, 116, § 48.

Copies of assessments, &c. to be delivered over to the new collector. 1821, 116, § 48.

Proceedings when a party declares an uncancelled tax to have been paid. 1821, 116, § 48.

When a town neglects to choose a constable or collector, proceedings. 1821, 116, § 49.

Plantations and their officers to

**SECT. 120.** When such deficient officer shall be arrested, or committed to jail, he shall be entitled to the same degree of liberty, as a debtor committed or arrested on execution, upon his giving sufficient bond, and to the same privileges, to which he would be entitled, by the laws in force, for the time being, respecting poor debtors, if he had been committed or arrested on an execution in favor of a private individual creditor.

**SECT. 121.** When any constable or collector of taxes shall be taken on execution, by virtue of this chapter, the assessors may demand and receive of him a true copy of all or any of the assessments, which he received of them, and then had in his hands unsettled, with the whole evidence of all payments made on the same assessments; and, on his compliance with this demand, he shall receive such credit as the assessors, on inspection of the assessment, shall adjudge him entitled to, and for the balance he shall be held accountable.

**SECT. 122.** The same town, plantation or parish may proceed to the choice of another collector, at any other time, besides the annual meeting, to complete collection on the assessments, and he shall be duly sworn, and give such security, as is required of the first collector, and the assessors shall deliver the assessments, received back as aforesaid, to such new collector, with a proper warrant for completing the collection; and he shall proceed accordingly, in the manner before prescribed.

**SECT. 123.** If any collector or constable, taken as aforesaid, shall refuse, on demand made, to deliver up to the assessors the assessment committed to him, with all evidence of payments, as aforesaid, he shall, forthwith, by the officer who took him, or by a warrant from a justice of the peace, be committed to the county jail, there to remain, until he shall exhibit and give up the same as required.

**SECT. 124.** In such case, the assessors shall take copies of the record of assessments, and deliver them to the collector chosen in the manner mentioned in the one hundred and twenty second section, with their warrant for the collection of the taxes remaining uncollected by the former collector.

**SECT. 125.** When the tax of any person named in said assessment does not thereby appear to be paid, but such person declares to the collector, that it had been paid to the former collector, the new collector shall not proceed to distrain or commit such person, unless a vote of such town, plantation or parish is first passed therefor, and certified to him by the town, plantation or parish clerk.

**SECT. 126.** When any town shall neglect to choose any constable or collector, or any plantation to choose a collector, to collect any state or county tax, the sheriff of the county is hereby authorized and directed to collect the same, having received an assessment made of the proportion of the several persons ratable in such town or plantation, with a warrant under the hands of such assessors, as shall be appointed by the county commissioners, or under the hands of the assessors of such town or plantation, duly chosen by the same.

**SECT. 127.** When plantations neglect to choose constables or collectors, or if those chosen, and accepting their trust, neglect their

**CHAP. 14.** sheriffs by law are entitled, for levying executions, except, that his travel shall be computed only from his dwelling house to the place, where the distress is made.

taxes.  
1821, 116, § 55.

**ARTICLE IV. DUTIES OF TOWN TREASURERS, WHEN APPOINTED COLLECTORS OF TAXES.**

Towns may appoint their treasurer, collector of taxes.  
1821, 116, § 56.  
1826, 337, § 5.  
He may appoint assistants.  
Their bond.

**SECT. 134.** The inhabitants of any town or plantation may, in March or April annually, appoint their treasurer, a collector of taxes; and the treasurer, so appointed, may appoint under him such number of assistants, as may be necessary, and they shall give bond for the faithful discharge of their duties, in such sum, and with such sureties, as the selectmen may approve, and the collector of taxes shall have like powers, as are vested in collectors chosen for that purpose.

Towns may agree on abatements to be made on payments at stated times.  
1821, 116, § 56.  
1826, 337, § 5.

**SECT. 135.** At any meeting, at which they shall vote to raise any tax, they may agree, not only on the abatement to be made to persons, who shall voluntarily pay their taxes to the collector, at certain periods, but likewise, the length of time, after the commitment of the tax to the treasurer, within which any person, by so paying his taxes, may be entitled to such abatement.

Public notice to be given within seven days.  
1826, 337, § 5.

**SECT. 136.** A notification of such votes, and time when such taxes were committed, shall be posted up, by the treasurer, in one or more public places in such town, or other corporation aforesaid, within seven days after such commitment.

Abatements on such taxes as are paid at the periods mentioned.  
1821, 116, § 57.

**SECT. 137.** All such inhabitants of any such town or plantation, who shall voluntarily pay the said collector, or his deputy, the amount of their several and respective taxes, at any of the periods mentioned in the notifications of the votes posted up as aforesaid, shall be entitled to an abatement of so much of their respective taxes, as shall be specified in such votes, to be allowed according to the time of such payment.

Taxes not so paid to be collected, as usual.  
1821, 116, § 58.

**SECT. 138.** All such taxes, as shall not have been paid agreeably to the provisions of the preceding section, shall, and may be collected, by the collector, or his deputy, agreeably to the other provisions of this chapter.

Assessors to deposit the assessments with the treasurer, together with a warrant.  
1821, 116, § 59.

**SECT. 139.** The assessors of any town or plantation, which may, at their annual meeting, regulate the collection of their taxes, agreeably to the provisions contained in the five preceding sections, shall assess their taxes in due form, and deposit the same in the hands of the treasurer for collection, together with their warrant for that purpose, after he shall have been duly qualified, together with his deputies.

Treasurer's powers to continue till the collections shall be completed.  
1826, 337, § 6.

**SECT. 140.** All the powers granted in this chapter to treasurers, who are appointed collectors of taxes, shall be extended, till the collection of any tax committed to them shall have been completed, notwithstanding, the year, for which they were appointed, may have elapsed.

Town treasurers required to give bonds.  
1826, 337, § 7.

**SECT. 141.** The selectmen of towns, and the assessors of plantations, shall require the treasurer of such town or plantation to give bond, with sufficient sureties, for the faithful performance of the duties of his office, and, if he neglect or refuse to give such bond, it

- CHAP. 14.** and may be renewed for the collection of such sum, as may appear due upon them when returned; including expenses incurred in attempting to collect the same.
- three months and renewable. 1836, 218, §1, 2.  
 Sheriff's powers the same on alias and pluries warrants. 1836, 218, § 3.
- SECT. 151.** The power and duty of the sheriff shall be the same in executing such alias or pluries warrant, as the original warrant.

## CHAPTER 15.

### OF THE INDIAN TRIBES IN THE STATE.

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| <p><b>SECT. 1.</b> Agents of indian tribes now in office, to remain.</p> <p><b>2.</b> When a vacancy happens how to be filled.</p> <p><b>3.</b> General duties of the agent of the Penobscot tribe.</p> <p><b>4.</b> Agents of both tribes to be sworn and to give bonds. Their duties.</p> <p><b>5.</b> Certain contracts void, unless allowed by the agent.</p> <p><b>6.</b> Limitation of leases and other contracts.</p> <p><b>7.</b> Agents may sue in their own names for the benefit of the indians.</p> <p><b>8.</b> Agents to keep a record of proceedings and settle accounts annually with the governor, &amp;c.</p> <p><b>9.</b> No foreigner to be permitted to take timber, &amp;c. from the township reserved for the Passamaquoddy tribe.</p> <p><b>10.</b> Of the islands, &amp;c. belonging to the Penobscot tribe.</p> <p><b>11.</b> Agent of the Penobscot tribe to place avails of leases, &amp;c. in the state treasury.</p> <p><b>12.</b> Amount to be at agent's risk, if he sell or lease on credit.</p> <p><b>13.</b> Surveys of islands from Old Town falls, &amp;c. and estimates, to be made by the land agent.</p> <p><b>14.</b> What shall be designated upon the plans.</p> <p><b>15.</b> How the lots shall be located.</p> | <p><b>SECT. 16.</b> Agent of the Penobscot tribe to give to each indian a certificate of his lot. Form.</p> <p><b>17.</b> No indian to sell or lease his lot, nor commit waste.</p> <p><b>18.</b> Of the public farm.</p> <p><b>19.</b> Agent to employ a superintendent to manage the farm and take care of the infirm and orphans.</p> <p><b>20.</b> He may lease reserved privileges for mills, booms and fisheries.</p> <p><b>21.</b> Survey and assignment of lots on the point of Old Town island.</p> <p><b>22.</b> Same subject. Restrictions on transfers.</p> <p><b>23.</b> Appropriation of the interest on the amount of four townships purchased of the Penobscot indians.</p> <p><b>24.</b> Agents of the Passamaquoddy tribe may sell timber and grass on township, number two, on St. Croix river.</p> <p><b>25.</b> Agents shall furnish annually potatoes and seeds.</p> <p><b>26.</b> And distribute \$300 annually to the distressed poor.</p> <p><b>27.</b> And blankets, flannels and woollen cloths to females and young children, amounting to \$500.</p> <p><b>28.</b> Compensation of the agent.</p> <p><b>29.</b> Sums over \$100 to be loaned on interest to a bank in Washington county.</p> <p><b>30.</b> Penalty for selling spirituous liquors to indians.</p> <p><b>31, 32, 33.</b> Bounties on produce raised by the indians.</p> |
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Agents of indian tribes, now in office, to remain. 1821, 175.

**SECTION 1.** Those persons, who have been appointed as agents for the Penobscot and Passamaquoddy tribes of indians, respectively, shall continue to perform the duties assigned to them, according to the tenor of their respective appointments.

**CHAP. 15.**

&c. belonging to the Penobscot tribe. 1826, 323, § 1.

Agent of the Penobscot tribe to place avails of leases, &c. in the state treasury. 1826, 323, § 2. Amount to be at agent's risk, if he sell or lease on credit. 1826, 323, § 2. Surveys of islands from Old Town falls, &c. and estimates, to be made by the land agent. 1835, 158, § 1. What shall be designated upon the plans. 1835, 158, § 2.

How the lots shall be located. 1835, 158, § 3.

Agent of the Penobscot tribe to give to each indian a certificate of his lot. Form.

leased by their agent or agents, for the benefit of such tribe, for any term not exceeding twelve years; and the burnt and decaying timber on the two indian townships on the west branch of Penobscot river may be sold by such agent or agents, when they shall judge it for the interest of such tribe: provided, such lease and sales, and the terms and conditions thereof, shall be assented to by the governor and lieutenant governor of the tribe, and approved by the governor of the state.

**SECT. 11.** Such agent or agents of the Penobscot tribe shall place the avails of the leases and sales made by them in the state treasury, subject to the order of the governor and council, according to law.

**SECT. 12.** All such leases and sales, as are mentioned in the tenth section, which are made on credit, shall be at the risk of the agent or agents, and be accounted for as money.

**SECT. 13.** The land agent shall cause the islands in Penobscot river, from Old Town falls to Mattawamkeag point, to be accurately surveyed and numbered, if the same has not been already done, and their present value estimated, and duplicate plans thereof made and returned to the land office, and to the indian agent.

**SECT. 14.** He shall also, if the same has not been already done, cause to be surveyed, and laid down in both of said plans, a suitable quantity of land, adjoining all water privileges belonging to said island, which may be deemed valuable for mills, booms and fisheries: and a suitable tract for a farm, for the accommodation of the aged, the invalids and orphan children of the tribe, and suitable tracts of wood and timber land; and also shall designate on such plans a suitable lot for each indian of the tribe, male and female, of the age of twenty one years or more, who may apply therefor for cultivation, not exceeding the due proportion, which may belong to him or her, of such surveyed lands, after deducting the part reserved for public use; the lots so assigned shall be the property of the person, to whom assigned, during the pleasure of the legislature.

**SECT. 15.** In all cases, the lots shall be so located to any indian, as to include the land cultivated and improved by him, if any, and if that will not be sufficient for him, then other land on some other island may be assigned him, so as to make lots of nearly equal value.

**SECT. 16.** The agent or agents for said Penobscot tribe shall issue to each of the indians, who has had his lot surveyed and designated as aforesaid, a certificate, in substance as follows:

“ Know all men by these presents, that I ———, agent for the Penobscot tribe of indians, have caused to be surveyed and set off to ———, his portion of land on the islands in Penobscot river, belonging to said tribe of indians, as contemplated by the acts of the legislature of the state of Maine, bounded and described as follows: ———. To have and to hold the same, as contemplated by the acts aforesaid, with all privileges conferred by said acts. In witness whereof, I have hereunto set my hand and seal, as agent of the Penobscot tribe of indians, this ——— day of ———, in the year one thousand eight hundred and ———.

} Agent of the Penobscot  
} tribe of indians.”

**CHAP. 15.**

number two, on St. Croix river. 1839, 388, § 1, 2. Agent shall furnish annually potatoes and seeds. 1839, 388, § 3.

And distribute \$300 annually to the distressed poor. 1839, 388, § 4. 1840, 80, § 1. And blankets, flannels and woolen cloths to females and young children, amounting to \$500. 1839, 388, § 5.

Compensation of the agent. 1839, 388, § 6.

Sums over \$100 to be loaned on interest to a bank in Washington county. 1839, 388, § 8.

Penalty for selling spirituous liquors to indians. 1835, 158, § 9.

Bounties on produce raised by the indians. 1838, 316, § 1.

Same subject. 1838, 316, § 2.

Same subject. 1838, 316, § 3.

township, to the amount of one thousand dollars annually; expressly retaining in the written contract of the sale, a lien on the timber and the grass cut, until the amount due for stumpage of the same is paid.

**SECT. 25.** In April and May annually, such agent shall furnish said tribe as many potatoes and other seeds, as may be necessary for agricultural purposes, not exceeding the value of two hundred dollars, and shall render a certified account to the governor and council of the quantity of each article delivered, with the certificate of two of the principal merchants in Eastport, that the prices charged in the account were the market value at the time of delivery.

**SECT. 26.** The said agent in person shall distribute to the distressed poor of the tribe three hundred dollars annually, in sums not to exceed fifty dollars per month, in such portions, to each of such distressed persons, as his or her circumstances may seem to demand.

**SECT. 27.** He shall purchase in Boston or New York, with cash, for the use of the females, and children under twelve years of age, blankets, flannels, and woolen cloths, to be delivered to said females and children, in equal proportion, by said agent in person, in the first week of November annually, as will amount, in the aggregate, to the sum of five hundred dollars; and the invoice and delivery shall be certified as in the twenty fifth section.

**SECT. 28.** The agent shall be entitled to a commission of five per cent. for disposing of lumber and grass, and collecting the amount of sales, and a like commission on moneys disbursed in making purchases; and to three dollars per day, when necessarily employed in going to the said township to secure lumber cut by trespassers, or survey lumber.

**SECT. 29.** When the agent has in his hands, belonging to the tribe, a sum exceeding one hundred dollars, he shall deposit the same in one of the banks in the county of Washington, at such rate of interest, as may be agreed upon, until it shall be required for the purposes named in this chapter.

**SECT. 30.** If any person shall sell or give to any indian, any spirituous liquors, on being convicted thereof, before any justice of any court competent to try the cause, he shall be fined, not less than five dollars, nor more than twenty dollars, one half to the state, and the other to the complainant.

**SECT. 31.** Bounties shall be paid to every indian of the Penobscot or Passamaquoddy tribe, for produce raised by him, either on his own land or on land belonging to the tribe as follows:

1. For every bushel of wheat; twenty cents.

2. For every bushel of rye, oats, barley, buckwheat, peas or beans; ten cents.

3. For every bushel of potatoes, turnips, parsnips, beets or carrots; five cents.

**SECT. 32.** Before any such bounty shall be paid to any such indian, he shall prove, to the satisfaction of the agent, the number of bushels of wheat or other grain, and of potatoes or other roots, before named, which have been raised by him, on the land before mentioned.

**SECT. 33.** Such agent shall keep an account of moneys so paid out, and present the same, duly certified, to the governor and council, in the month of January annually, for examination and allowance.

- CHAP. 16.** **SECT. 26.** Penalty for neglect of captain to make returns.
27. Returns of artillery or cavalry, not annexed to a regiment or battalion.
28. Returns to be transmitted by mail.
29. List of members of volunteer companies to be returned annually to the commander of the regiment.
30. Adjutant general to make returns.
- ARTICLE VI. ARMS AND EQUIPMENTS.**
31. Officers and soldiers to be constantly equipped.
32. Uniform of officers.
33. Equipments and uniform exempt from attachment.
34. Persons unable to equip themselves, how to be furnished.
35. Parents, masters and guardians to equip minors. Proviso.
36. Officers and privates exempt from arrest, when on duty.
- ARTICLE VII. ARTICLES FURNISHED.**
37. State colors; instruments of music.
38. Blank orders and notifications.
39. Field pieces, apparatus and ammunition for artillery. Horses.
40. Towns to provide ammunition, on governor's proclamation. Penalty for neglect.
41. Town treasurers to pay one dollar to each soldier at review. Proviso. Penalty for neglect.
42. Blank cartridges to be furnished by town treasurers for review.
43. Governor to cause repairs of apparatus, and the erection and repair of gun houses for artillery.
44. Decayed gun houses may be sold.
- ARTICLE VIII. OFFICERS, APPOINTMENT OR ELECTION, AND QUALIFICATION.**
45. Commissioned officers required by laws of the United States, how chosen or appointed.
46. Non commissioned officers, how appointed.
47. Additional officers, and how appointed.
48. Manner of choosing officers. Ten days notice to electors.
49. Returns of elections and commissions, how transmitted.
50. Companies neglecting to do duty, or elect officers, to be disbanded.
51. Officers to take rank from day of their election or appointment.
52. If commission be lost by casualty, officer may be commissioned anew.
- SECT. 53.** Precedence in rank, to be decided by lot in certain cases.
54. Oath of commissioned officers.
55. Clerks of companies, how appointed and sworn.
56. Duties of such clerks.
57. Clerks pro tempore.
58. Any member may be required to perform certain duties of the clerk, in certain cases. Forfeiture for neglect.
59. Commanding officer to keep the records in such cases.
60. Vacancy of superior officer, how supplied.
61. If a company be destitute of officers, commander of regiment or battalion may appoint non commissioned officers.
62. In case a company remain without officers three months, commander of regiment shall detail an officer to take command. Such officer to keep records, and prosecute for fines.
63. Penalty, if non commissioned officer or private, in such case, neglect to warn the company, when ordered.
64. Compensation of adjutant and quarter master general.
65. Compensation of certain other officers.
66. General duties of officers.
- ARTICLE IX. OFFICERS, HOW DISCHARGED.**
67. Term of office limited to seven years, unless reelected. Proviso, in case of major general. Occasions for discharge.
68. Officers not to resign, when under arrest. Resignations not allowed between May 1, and November 1, except for special reasons.
69. Officers to deliver up orderly and other books and property, before resigning.
70. Penalty for refusal to deliver up property of the state, on removal from office.
71. No officer exempt from duty until discharged, except when under arrest.
72. Officers convicted of infamous crimes, to be placed under arrest.
73. Elections of unsuitable persons to be void. Officers, becoming unfit, may be discharged.
- ARTICLE X. INSPECTION, DISCIPLINE, TRAININGS AND REVIEW.**
74. Inspection on the first Tuesday of May. Company trainings.



- CHAP. 16.** SECT. 127. Accused officer to be arrested, and to have a copy of charges before trial.
128. Proceedings, if he fail to appear, withdraw, or stand mute.
129. Offences of commissioned officers triable by courts martial.
130. Limitation of prosecutions before courts martial.
131. Arrests on the field of parade.

**ARTICLE XVI. PROCEEDINGS ON DRAFTS FOR ACTUAL SERVICE.**

132. Persons drafted to pay fifty dollars, or procure a substitute within 24 hours, or be liable to march as soldiers.
133. Fines appropriated to hire substitutes.
134. Officers, how detailed; non-commissioned officers and privates, how drafted.
135. Drafts from companies not organized.
136. Persons detached, to furnish themselves with three days provision.
137. Selectmen to furnish further supplies in carriages.
138. Penalty for neglect of selectmen in such case.
139. Officers responsible for camp equipage and utensils.
140. Members of cavalry companies to march with their own horses, after appraisal.
141. Officer neglecting to make draft, to be arrested.
142. Pensions to be allowed, if a soldier be killed or disabled, when on duty.

**ARTICLE XVII. RULES AND ARTICLES FOR GOVERNING THE TROOPS STATIONED IN FORTS AND GARRISONS WITHIN THIS STATE; AND ALSO THE MILITIA, OR ANY PART THEREOF WHEN CALLED INTO ACTUAL SERVICE.**

143. Rules, and penalties for violation thereof.
- I. Attendance on divine worship. Behavior.
- II. Profanity.
- III. Seditious or disrespectful words.
- IV. Contempt towards superior officers.
- V. Mutiny.
- VI. Not endeavoring to suppress mutiny.
- VII. Assaulting superior officer, or disobedience of orders.
- VIII. Desertion.
- IX. Advising to desert.

**ART. X. Provocations or challenges.**

- XI. Officers suffering others to fight duels.
- XII. Officers to quell affrays and disorders.
- XIII. Upbraiding others for refusing challenges.
- XIV. Officers to keep good order, and redress abuses.
- XV. Officer wronged, may complain to the commander in chief.
- XVI. Inferior officer wronged, may complain to colonel.
- XVII. Selling or wasting ammunition.
- XVIII. Absence without leave.
- XIX. Absence one mile from camp without leave.
- XX. Not retiring to quarters at beating of tattoo.
- XXI. Officers and soldiers to repair to parade at time fixed.
- XXII. Intoxication.
- XXIII. Sentinel sleeping on his post.
- XXIV. Making false alarms.
- XXV. Quitting platoon or division without leave.
- XXVI. Insulting or abusing persons bringing provisions.
- XXVII. Abandoning post in time of engagement.
- XXVIII. Making known the watch word.
- XXIX. Relieving the enemy.
- XXX. Corresponding with the enemy.
- XXXI. Public stores taken from the enemy, to be secured.
- XXXII. Leaving post for plunder.
- XXXIII. Compelling commanding officer to abandon post.
- XXXIV. Sutlers and retailers subject to military orders.
- XXXV. When different corps do duty together, the oldest officer to command.
- XXXVI. Same rule, when different corps march or encamp together.
- XXXVII. General courts martial, how constituted.
- XXXVIII. Rank of members.
- XXXIX. Appointment of prosecuting officer, oath of members and prosecutor.
- XL. Department of members; mode of giving votes.
- XLI. Witnesses to be examined under oath.
- XLII. No sentence of death, without concurrence of two thirds of the members.
- XLIII. Punishment for refusal of witnesses to testify.
- XLIV. Rank of officers for trial of a field officer. Proceedings to be between sunrise and sunset.

## CHAP. 16.

quantity of powder and ball] or with a good rifle, knapsack, shot pouch and powder horn, twenty balls suited to the bore of his rifle, and a quarter of a pound of powder, and shall appear so armed [and] accoutred and provided, when called out to exercise, or into service, except, that when called out on company days to exercise only, he may appear without a knapsack. That the commissioned officers shall severally be armed with a sword or hanger, and esponentoon; and that from and after five years from the passing of this act, all muskets, for arming the militia, as herein required, shall be of bores sufficient for balls of the eighteenth part of a pound. And every citizen, so enrolled, and providing himself with the arms, ammunition, and accoutrements required as aforesaid, shall hold the same *exempt* [exempted] from all suits, distresses, executions of [or] sales for debt, or [for] the payment of taxes.

Exempt from attachment.

Exempts.  
4 Mass. 239.  
17 Mass. 49.  
8 Greenl. 185.  
2 Pick. 597.

See United States post office laws.  
1825, March 3, § 35.  
1836, July 2, § 34.

Arrangement of militia.  
11 Mass. 386.

Officers.

§ 2. *And be it further enacted*, that the vice president of the United States, the officers, judicial and executive of the government of the United States, the members of both houses of congress, and their respective officers; all custom house officers with their clerks; all post officers and stage drivers, who are employed in the care and conveyance of the mail of the post office of the United States; all ferrymen, employed at any ferry on the post road; all inspectors of exports; all pilots; all mariners, actually employed in the sea service of any citizen or merchant, within the United States; and all persons, who now are, or may hereafter be exempted by the laws of the respective states, shall be, and are hereby exempted from *military* [militia] duty, notwithstanding their being above the age of eighteen, and under the age of forty five years.

§ 3. *And be it further enacted*, that within one year after the passing of this act, the militia of the respective states shall be arranged into divisions, brigades, regiments, battalions and companies, as the legislature of each state shall direct; and each division, brigade and regiment shall be numbered at the formation thereof, and a record made of such numbers in the adjutant general's office, in the state; and, when in the field, or in service in the state, each division, brigade and regiment shall respectively take rank according to their numbers, reckoning the first or lowest number *higher* [highest] in rank. That, if the same be convenient, each brigade shall consist of four regiments, each regiment of two battalions, each battalion of five companies, each company of sixty four privates. That the said militia shall be officered by the respective states, as follows: to each division, one major general and two aids de camp, with the rank of major; to each brigade, one brigadier general, with one brigade inspector, to serve also as brigade major, with the rank of [a] major; to each regiment, one lieutenant colonel commandant; and to each battalion, one major; to each company, one captain, one lieutenant, one ensign, four sergeants, four corporals, one drummer and [one] fifer or bugler. That there shall be a regimental staff, to consist of one adjutant and one quartermaster, to rank as lieutenants, one paymaster, one surgeon and one surgeon's mate, one sergeant major, one drum major and one fife major.

§ 4. *And be it further enacted*, that out of the militia, enrolled,

## CHAP. 16.

Rank of officers.

§ 7. [8] *And be it further enacted*, that all commissioned officers shall take rank according to the date of their commissions ; and when two of the same grade bear an equal date, then their rank to be determined by lot, to be drawn by them before the commanding officer of the brigade, regiment, battalion, company or detachment.

Disabled officers and soldiers.

§ 8. [9] [And] *be it further enacted*, that if any person, whether officer or soldier, belonging to the militia of any state, and called [out] into the service of the United States, be wounded or disabled, while in actual service, he shall be taken care of, and provided for, at the public expense.

Duties of brigade inspector.

§ 9. [10] *And be it further enacted*, that it shall be the duty of the brigade inspector to attend the regimental and battalion meetings of the militia, composing their several brigades, during the time of their being under arms, to inspect their arms, ammunition and accoutrements ; superintend their *exercises* [exercise] and manœuvres, and introduce the system of military discipline before described, throughout the brigade, *agreeably* [agreeable] to law, and such orders as they shall from time to time receive from the commander in chief of the state ; to make returns to the adjutant general of the state, at least once in every year, of the militia of the brigade, to which he belongs, reporting therein the actual situation of the arms, accoutrements and ammunition of the several corps, and every other thing, which, in his judgment, may relate to *the* [their] government and [the] general advancement of good order and military discipline ; and the adjutant general shall make a return of all the militia of the state to the commander in chief of the said state, and a duplicate of the same, to the president of the United States. And whereas, sundry corps of artillery, cavalry and infantry, now exist in several of the said states, which, by the laws, customs, or usages thereof, have not been incorporated with or subject to the general regulations of the militia:

Returns to be made by the adjutant general.

Privileges confirmed to certain corps.

§ 10. [11] *Be it further enacted*, that such corps retain their accustomed privileges, subject, nevertheless, to all other duties required by this act, in like manner, with the other militia.

Act of March 2, 1803.

An act, passed on the second day of March, in the year one thousand eight hundred and three, entitled,

“ An act, in addition to an act, entitled an act, more effectually to provide for the national defence, by establishing an uniform militia throughout the United States.”

Adjutant generals to make annual returns to the President.

§ 1. *Be it enacted by the senate and house of representatives of the United States of America, in congress assembled*, that it shall be the duty of the adjutant general of the militia in each state, to make return of the militia of the state, to which he belongs, with their arms, accoutrements and ammunition, agreeably to the directions of the act, to which this is *in* [an] addition, to the president of the United States, annually, on or before the first Monday in January, in each year ; and it shall be the duty of the secretary of war, from time to time, to give such directions to the adjutant generals of the militia, as shall, in his opinion, be necessary to produce an uniformity in the said returns, and he shall lay an abstract of the same before congress, on or before the first Monday of February annually.

Citizens enroll-

§ 2. *And be it further enacted*, that every citizen, duly enrolled

CHAP. 16. *System of discipline and field exercise.*

*of the United States of America, in congress assembled, that the system of discipline and field exercise, which is, and shall be ordered to be observed, by the regular army of the United States, in the different corps of infantry, artillery and riflemen, shall also be observed by the militia in the exercises and discipline of the said corps respectively, throughout the United States.*

Repeal of 7th section of act of May 8, 1792.

§ 2. *And be it further enacted, that so much of the act of congress, approved the eighth [day] of May, one thousand seven hundred and ninety two, as approves and establishes the rules and discipline of the Baron de Steuben, and requires them to be observed by the militia, throughout the United States, be, and the same is hereby repealed.*

ARTICLE II. EXEMPTIONS.

Absolute ex-  
empts.  
1834, 121, § 1.  
13 Mass. 316.  
1 Pick. 261.

SECT. 2. In addition to the exemptions made by the foregoing laws of the United States, the following described persons shall be absolutely exempted from military duty, notwithstanding their ages may be more than eighteen, and less than forty five years, viz: the justices of the supreme judicial court; all regularly ordained ministers of the gospel, of every denomination, while they shall ordinarily officiate as such, and continue in regular standing; all officers, who have heretofore held, or may hereafter hold, commissions in the militia of this state, or any of the United States, or in the army or navy of the United States, for the term of five years, or who shall have been superseded, or whose corps, or company, shall have been disbanded, and who shall have been honorably discharged.

Exempts by  
procuring cer-  
tificates.  
1834, 121, § 1.  
1835, 184, § 1, 2.  
12 Mass. 441.  
17 Mass. 351.  
4 Greenl. 527.  
Quakers and  
shakers.

SECT. 3. The persons, named in this section, shall be exempted from military duty, upon producing certificates as hereinafter prescribed:

Every person, of the religious denominations of quakers and shakers, who shall, on or before the first Monday of April annually, produce a certificate to the commanding officer, within whose bounds such quaker or shaker resides; which certificate, signed by two or more of the elders or overseers, as the case may be, and countersigned by the clerk of the society, with which such quaker or shaker meets for religious worship, shall be in substance as follows:

“We the subscribers, of the society of the people called \_\_\_\_\_, in the town of \_\_\_\_\_, in the county of \_\_\_\_\_, do hereby certify, that \_\_\_\_\_ is a member of our society, and that he frequently and usually attends with said society for religious worship, and conforms to the usages of the same, and, we believe, is conscientiously scrupulous of bearing arms.

A. B. } Elders (or overseers,  
C. D. } as the case may be.)

E. F. clerk.”

Enginemen.  
14 Mass. 374.

All enginemen, upon the conditions specified in the acts, under which they have been, or may hereafter be appointed, provided, that such enginemen shall be still liable to be called forth, as members of the company, within the limits of which they reside, to execute the laws of the United States, or of this state, to suppress insurrection, and repel invasion, but shall not vote in the choice of company officers, so long as they claim exemption from other military duty;

**CHAP. 16.**

In case the surgeon certifies, that the infirmity is incurable, the person shall be absolutely exempted.

If surgeon or mate be absent, the other may grant certificates.

Certificates not to be granted at other times and places, except for special reasons.  
1839, 399, § 2.

Surgeon shall file applications with adjutant with his decision thereon.

Commanders of regiments to notify captains of certificates granted to members of their companies.

Surgeons not to receive fees.  
Penalty.  
1839, 399, § 3.

In case of vacancy of surgeon.  
1834, 121, § 34.

Minors exempted on paying equivalent.  
22 Pick. 571.

term, as they may think such disability will continue, not exceeding one year. Provided, that if such surgeon and surgeon's mate shall be of opinion, that the infirmity of any person is incurable, and of such a nature, that he can never be able to perform military duty, they may give to such person a certificate thereof, which, being recorded as aforesaid, shall absolutely exempt such person from military duty, until revoked by the same authority.

If the surgeon or surgeon's mate be absent at any time and place so appointed, or in case of a vacancy in either of those offices, the one present or in office may grant a separate certificate, as aforesaid, which shall have the like operation; and such surgeon and surgeon's mate shall have power, on due notice, if they see cause, to revoke any such certificate.

No certificate shall be granted by such surgeon or surgeon's mate, at any other time and place, than those designated in such notice, unless the person, so applying, shall satisfy such surgeon or surgeon's mate, by his statement under oath in his said application, that such infirmity has arisen since the time so appointed, or that he had no notice, or was unable to attend at either of such times. And it shall be the duty of the surgeon and surgeon's mate to file with the adjutant of the regiment, as soon as practicable, all the original applications made to them, with a minute thereon, whether a certificate was granted, or not, and, if granted, for what period.

The commanding officer of the regiment shall, as soon as may be thereafterwards, cause notice to be given to the commanding officer of the respective companies, of all certificates of exemptions thus obtained, by persons otherwise liable to be enrolled in their companies.

If any surgeon or surgeon's mate shall demand or receive of any non commissioned officer or private, any fee or reward for any certificate or examination, he shall forfeit and pay a fine equal to four times the amount of the fee so received or demanded, to be recovered in an action of debt before any court of competent jurisdiction, in the name of the commanding officer of the company, in which such person, so paying or causing to be paid such fee, would be liable to do duty, to be appropriated in the same manner, as other military fines.

If there be no surgeon nor surgeon's mate in commission in any regiment, any person, otherwise liable to do military duty therein, may be exempted therefrom, on account of bodily infirmity, on obtaining a certificate from some respectable physician, living within the bounds of the regiment, that he is unable to do such duty by such infirmity, for such term, not exceeding one year, as the officer commanding the company shall judge reasonable, provided, such officer shall certify such exemption on the back of the certificate, and the officer commanding the regiment shall approve and countersign the same.

**SECT. 4.** Any minor, of eighteen years of age and upwards, shall be exempted from the performance of all ordinary military duty, by paying twenty five cents annually, to the treasurer of the city, town or plantation, and depositing with the commandant of the company, within the limits of which he resides, a receipt for the same, on or before the first Tuesday of May annually.

**CHAP. 16.** commissioned officer, he shall issue orders to the clerk of such company, to enrol all persons, liable to do duty therein, and to return the roll thereof to him forthwith; and if there be no clerk of such company, then such commanding officer shall require, in writing, the assessors of cities, towns or plantations, in which such company is situated, or some other person or persons, to make out and return to him, within ten days, a list of the names of all the persons liable by law, to do military duty in such company; and if any such clerk, assessors, or other persons, shall fail to comply, they shall forfeit and pay, not less than twenty, nor more than one hundred dollars, to be recovered by indictment or by action on the case, by any person whatever, one half to the use of the state, and the other half to the use of the prosecutor.

Persons convicted of infamous crimes to be disenrolled. 1834, 121, § 44. Art. 24.

**SECT. 11.** If any non commissioned officer or private, shall, in due course of law, be convicted of any infamous crime, he shall forthwith be disenrolled from the militia.

#### ARTICLE IV. ORGANIZATION.

Militia how organized. 1834, 121, § 6, 17, 52. U. S. May, 1792. 4 Pick. 25.

**SECT. 12.** The governor is authorized, with advice of the council, to organize and arrange the militia of this state into divisions, brigades, regiments, battalions and companies, conformably to the laws of the United States, and make such alterations therein, as from time to time may be necessary: and each division, brigade and regiment shall be numbered at the formation thereof, and a record made of such numbering in the adjutant general's office. And every new division, brigade and regiment shall be designated by the number next higher than that of the division, established next before it, and the divisions, brigades and regiments shall take rank according to their numbers, the first being highest in rank. Provided however, that the governor, with advice of the council, may organize independent battalions of infantry with a battalion staff, where the local situation of the troops is such, that they cannot be conveniently connected with a regiment.

Divisions, brigades and regiments designated by numbers.

**SECT. 13.** All applications or petitions for raising companies at large, and for alterations in the arrangement of the militia, shall be made to the governor, who, with advice of the council, may grant such petitions or applications, as may appear proper.

Applications for volunteer companies and for alterations, to be made to the governor. 1834, 121, § 6. 16 Mass. 523. Enlistments not to reduce standing companies below forty. 1834, 121, § 19.

**SECT. 14.** No company of cavalry, artillery, light infantry or riflemen shall be raised at large, when any of the standing companies shall thereby be reduced to a less number than forty effective privates, exclusive of conditional exempts and two musicians, and including corporals; and if any officer of cavalry, artillery, light infantry or riflemen shall enlist any men belonging to a standing company, or residing within the bounds thereof, for the purpose of forming or recruiting his company, when, by means thereof, such standing company would be reduced to a less number than forty effective privates, borne on the roll, exclusive of those between the ages of eighteen and twenty one, and between thirty and forty five years, such enlistment shall be void; and whenever any person shall enlist into any such company, raised at large, the commanding officer of the company, into which such person may enlist, shall give notice thereof in writing to the commanding officer of the standing

Notice of enlistments to commander of standing company.

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**SECT. 19.** Where, by the division of any corps, a new division or brigade shall be so formed, as to leave but three companies of any regiment of cavalry or artillery, or where, by the disbanding of any company, such regiment of cavalry or artillery shall be reduced to three companies, such three companies shall still constitute a regiment, and all the officers thereof shall retain their command and rank, the same as if said corps had not been reduced.

**SECT. 20.** The commanding officer of each company of artillery may enlist three men to serve as drivers, who shall be exempted from other military duty, except that of keeping the harnesses and apparatus of the carriages belonging to the company, in good order.

**SECT. 21.** Each colonel or commanding officer of a regiment of infantry may raise, by voluntary enlistment, within his own regiment or any adjoining regiment, with the written consent of the commanding officer thereof, and organize and establish within his own regiment, a band of music, not to exceed twenty musicians, including one master and one deputy master; and the colonel or commanding officer shall grant the musicians, and their officers, warrants as such; and each band shall be under the direction of the commanding officer of the regiment, in which it is organized.

It shall be the duty of the master and deputy to teach, lead and command such band, and to issue all such orders as they may be, by their colonel or commanding officer, authorized to do, for these purposes.

Each master, deputy master and musician shall constantly keep himself provided with the uniform of the band, to which he belongs; which uniform is to be prescribed in the same manner as the uniform of the regiment, to which the band belongs; and shall also keep himself constantly provided with such instrument or instruments, as may be directed by the commanding officer of the regiment.

The bands, belonging to the regiments, shall also be under the brigadier general, or the commanding officer of the brigade, the senior master having the direction of said bands, whenever the said regiments shall meet in brigade.

**SECT. 22.** If any master, deputy master or musician shall be guilty of any neglect of duty, disobedience of orders, disorderly or other unmilitary conduct, he shall forfeit not less than five, nor more than twenty dollars, for each offence, one half thereof to the use of the officer suing therefor, and the other half to the colonel of the regiment, to which the offender may belong, for the purchase and repair of musical instruments for said band; to be sued for by the adjutant of the regiment, or brigade major of the brigade, if assembled in brigade, in an action of the case, before any justice of the peace in the county where the offender resides; and no appeal shall be allowed to either party: and such master, deputy or musician shall moreover be liable to be removed from the band at the discretion of the commanding officer of the regiment, in which the band is organized, and forthwith enrolled as a private in the standing company, within the bounds of which he resides.

Three companies of artillery or cavalry in certain cases to constitute a regiment. 1834, 121, § 17.

Artillery drivers. 1834, 121, § 17.

Regimental bands how organized. 1834, 121, § 20.

Duties of master and deputy master.

Uniform of bands.

By whom commanded.

Penalties for misconduct. 1834, 121, § 20.

Appropriation of fines.

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Officers re-  
sponsible.

be furnished with a drum and fife, or bugle horn ; and each company of cavalry, with a trumpet or bugle horn ; and each brigadier general is hereby authorized to draw orders upon the quarter master general, in favor of the commanding officers of regiments, battalions and companies, for the above purposes, whenever the several regiments, battalions and companies may not be supplied as aforesaid. The commanding officers of regiments and battalions shall be responsible for the safe keeping of their colors ; and the commanding officers of companies shall be responsible for the safe keeping of the drums, fifes, bugle horns and trumpets, delivered to them for the use of their companies ; and it shall be the duty of the quarter master general to furnish such colors and musical instruments, and to present his accounts therefor to the legislature for allowance.

Blank orders  
and notifica-  
tions.  
1834, 121, § 32.

**SECT. 38.** The adjutant general shall furnish blank orders for the commanding officers of companies, to order their non commissioned officers or privates to notify their men to attend all the inspections, trainings and reviews, and meetings for the choice of officers, which shall be ordered ; also blank notifications or orders to be left with the men, by the non commissioned officers or privates, ordered to notify as aforesaid ; and it shall not be necessary, that seals be affixed to any orders whatever.

Field pieces,  
apparatus and  
ammunition for  
artillery.  
1834, 121, § 17.  
1836, 209, § 6.

**SECT. 39.** Each company of artillery shall be provided by the quarter master general with two good brass or iron field pieces, of such calibre as the commander in chief may direct, with carriages and apparatus complete, a caisson, forty round shot and forty rounds of cannister shot ; also tumbrel harness, implements, laboratory and ordnance stores, which may from time to time be necessary for their complete equipment for the field. The commander in chief shall order to be issued to each company of artillery, annually, a quantity of powder not exceeding seventy five pounds to those companies, which have two six pounders, fifty pounds to those, which have two four pounders, and forty pounds to those, which have two three pounders, which shall be expended on days of inspection or review, and in experimental gunnery. The commanding officer of every company of artillery shall be accountable for the careful preservation of the pieces, and all the apparatus aforesaid, appertaining to their equipment, and for the proper expenditure of the ammunition supplied by the government ; and he shall lay before the committee on accounts of the legislature, for allowance, his accounts of money actually expended in providing horses, to draw the field pieces and the tumbrel of the company ; provided however, no allowance shall be made, unless such company is ordered to appear at a battalion, regimental, brigade or division inspection or review, or unless such company is ordered on duty by the commander in chief.

Horses.

Towns to pro-  
vide ammuni-  
tion, on gover-  
nor's proclama-  
tion.  
1834, 121, § 26.

**SECT. 40.** Whenever the governor, on account of any public exigency, shall issue his proclamation to that effect, every town and plantation within this state shall provide and deposit, and constantly keep provided and deposited, in some suitable and convenient place, within said town or plantation, one hundred pounds of musket balls, each of the eighteenth part of a pound ; one hundred and twenty eight flints, suitable for muskets, for every sixty four soldiers enrolled within said town or plantation, except artillerists ; and also three



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make applica-  
tion therefor.

Expense how  
paid.

Proviso in case  
of companies  
raised at large.

days before such review, and shall return to, or account with, said treasurer for all the powder he may receive, over and above one quarter of a pound for each man actually on parade, at the muster for which said powder was drawn; and the treasurer aforesaid shall annually present his account for the expense of such powder to the legislature for allowance. Provided that, when the commanding officer of a company, raised at large, shall make requisitions to the selectmen of a town, mayor of a city, or the assessors of a plantation, for rations in money and powder, directed by law, they shall designate the number and names of the members of such company, belonging to such town, city or plantation, and certify their performance of military duty.

Governor to  
cause repairs of  
apparatus and  
the erection  
and repairs of  
gun houses for  
artillery.  
1834, 121, § 51.

**SECT. 43.** The commander in chief is hereby authorized to cause all necessary repairs to be made upon all the carriages and apparatus of the artillery, and all the gun houses belonging to the state; and also to cause gun houses to be erected for the safe keeping of the public property, as aforesaid, where such have not been erected; good and sufficient deeds of land therefor being first given, free of expense to the state.

Decayed gun  
houses may be  
sold by direc-  
tion of major  
generals.  
1834, 121, § 51.

**SECT. 44.** Whenever either or any of the gun houses, used for the protection and preservation of guns, gun carriages, tumbrels, munitions of war, or any other apparatus, provided for the use of the artillery of the state, shall be so far injured or decayed, as that in the opinion of the commanding officer of any division of the militia, in which said gun houses are situated, it is inexpedient to repair the same, such commanding officer may authorize the captain of the artillery company, having the immediate superintendence of the gun house, thus injured or decayed, to dispose of the same, either at public or private sale, as he may judge most advantageous, and deposit the proceeds thereof in the treasury of the state, for the use thereof.

**ARTICLE VIII. OFFICERS, APPOINTMENT OR ELECTION, AND QUALIFICATION.**

Commissioned  
officers requir-  
ed by laws of  
the U. States,  
how chosen or  
appointed.  
1834, 121, § 7, 10.  
Major generals.

**SECT. 45.** The commissioned officers of the militia, named in the aforesaid laws of the United States, shall be chosen and appointed in the manner following:

Adjutant and  
quarter master  
general.

The major generals, to be chosen by the senate and house of representatives, each having a negative on the other. The secretary of state, as soon as may be after any such election, shall notify the person elected thereof; and if such person shall not signify his acceptance of the office within thirty days after such notice, he shall be considered, as declining.

Division inspec-  
tors.

The adjutant general and quarter master general, to be appointed by the governor, with advice of the council, with the rank of brigadier general.

Aids of major  
generals.

The division inspectors, to be appointed by the major generals of their respective divisions, with the rank of lieutenant colonel.

Division quar-  
ter masters.

The aids de camp of the major generals, to be appointed by their respective major generals, with the rank of major.

The division quarter masters, to be appointed by the major generals of their respective divisions, with the rank of major.

- CHAP. 16.** choosing officers. 1834, 121, § 10. Ten days notice to electors.
- duty, from time to time, to give all such orders, as may be necessary for filling, by election, any vacancy of brigadier general, field officer, captain or subaltern, existing within his division. Previously to any such election, the electors shall have ten days notice thereof, at least, and no election for the choice of brigadier general or field officer shall be valid, until a majority of all the electors qualified by law to vote in such choice, counting all the existing vacancies in the offices of such electors, shall be present at such election.
- Persons elected to accept within one hour. 1834, 121, § 10.
- Every person, who shall have been elected to any office as aforesaid, and shall not, within one hour after he shall be declared so elected, signify his acceptance to the presiding officer thereof in person, or in writing, shall be considered, as declining to serve, and a new election shall be had.
- Returns of elections and commissions, how transmitted. 1834, 121, § 10.
- SECT. 49.** All returns of elections, or of neglects or refusals to elect, shall be made to the commander in chief by the major generals, in whose divisions such elections shall have been ordered; and all commissions shall be transmitted to the major generals, to be regularly passed down to the persons entitled to receive them.
- Companies neglecting to do duty or elect officers to be disbanded. 1834, 121, § 10.
- SECT. 50.** In case of neglect or refusal by any company to do duty, as prescribed by law, or to elect officers, when duly notified and ordered thereto, the governor may immediately disband the said company, and order the non commissioned officers, musicians and privates thereof, to be enrolled in the oldest adjoining standing company, and they shall be held to do therein all the duties required by law.
- Officers to take rank from the day of their election or appointment, to be expressed in their commissions. 1834, 121, § 10.
- SECT. 51.** The commission of every officer shall designate the division, brigade, regiment or battalion, and the corps, in which he shall be commissioned, and the day of his election or appointment; and he shall take rank from that day: and whenever an officer is transferred from one corps or station, to another in the same grade, the day of the date of his original appointment, or election, shall be expressed in his new commission, and that day be considered the date of his commission.
- If a commission be lost by casualty, officer may be commissioned anew. 1834, 121, § 10.
- SECT. 52.** When an officer shall by any casualty lose his commission, upon his making affidavit thereof before any justice of the peace of the county wherein he resides, and on filing such affidavit in the office of the adjutant general, he shall be entitled to receive a new commission of the same tenor and date, as the one so lost.
- Precedence in rank to be decided by lot in certain cases. 1834, 121, § 10.
- SECT. 53.** When two or more officers of the same grade are on duty together, and their commissions bear an equal date, and former pretensions of some commission do not decide, then their relative rank with each other shall be determined by lot, to be drawn by them before the commanding officer present; and, when on a court martial, before the president thereof.
- Oath of commissioned officers. 1834, 121, § 11. Const. art. 9, § 1.
- SECT. 54.** Every officer duly commissioned shall, before he enters upon the discharge of the duties of his office, take and subscribe the oaths, required by the constitution, before some justice of the peace, or before some superior field or general officer, or staff officer of the rank of field officer, who has previously taken and subscribed them, himself. And on the back of every military commission the following form of certificate of qualification shall be printed:

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commissioned officer or private in said company, requiring him to perform all the duties of clerk of said company, except keeping the records, until the clerk shall be able to perform the same, or some other person be appointed, for a term not exceeding three months; and if any non commissioned officer or private, so appointed, and who shall not have been, within one year previous, required to perform the same duties, shall refuse or neglect to perform all or any of the duties of said office, during said term, except keeping the records, he shall forfeit and pay not less than ten, nor more than twenty dollars, to be recovered by indictment, or by action on the case, by any person whatever; one half to the use of the state, and the other half to the use of the prosecutor.

Forfeiture for neglect.

Commanding officer to keep the records in such cases. 1837, 276, § 3.

**SECT. 59.** In all such cases, the records of the company shall be kept by the commanding officer, so long as such vacancy, absence, sickness or other disability shall continue; and the records so kept, shall be competent evidence of such orders and temporary appointments, as well as of all matters, of which such records would be evidence, if kept by the clerk.

Vacancy of superior officer, how supplied. 1834, 121, § 16.

**SECT. 60.** Whenever the office of major general, brigadier general, colonel, lieutenant colonel, major commandant or of captain shall be vacant, or in case of the absence of any such officer, the officer next in grade and in commission in the division, brigade, regiment, battalion or company, on due notice thereof from the proper superior officer, shall exercise the command, and perform the duties thereof, until the vacancy shall be supplied.

If a company be destitute of officers, commander of regiment or battalion may appoint non commissioned officers. 1834, 121, § 16.

**SECT. 61.** Whenever a company shall have neither commissioned nor non commissioned officers, the commanding officer of the regiment or battalion, to which such company belongs, shall appoint suitable persons within said company, to be non commissioned officers of the same, and grant them warrants accordingly; one of which non commissioned officers he shall appoint clerk, and endorse his warrant and administer the oath to him, as directed in the fifty fifth section; and the senior non commissioned officer of a company, while there are no commissioned officers in office, shall command the same; and all the powers of commanding officer shall be vested in him, until some commissioned officer shall be appointed, or chosen and qualified.

In case a company remain without officers three months, commander of regiment shall detail an officer to take command. 1837, 276, § 2, 4.

**SECT. 62.** Whenever any company shall have remained without any commissioned officers for the term of three months, the commanding officer of the regiment, to which said company belongs, shall detail some suitable officer of the staff, or of the line, not above the rank of lieutenant, to train and discipline said company, until some officer shall be elected, or appointed by the commander in chief, as provided in the second section of the seventh article of the constitution, and commissioned; and such officer, so detailed, shall have the same power and authority, and be subject to the same liabilities, as if he were captain of such company; and he shall keep the records of the company, and prosecute for all fines and forfeitures, in like manner as clerks of companies are authorized and required to do, by virtue of the ninety ninth section of this chapter; one half of the amount recovered to be to the use of the regiment, and the other half to the use of the officer. The officer so prosecuting shall be a competent witness in the case.

Such officer to keep records, and prosecute for fines.

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Officers not to resign, when under arrest. Resignations not allowed between May 1st, and November 1st, except for special reasons. 1834, 121, § 44. Art. 8.

Officers to deliver up orderly and other books and property, before resigning. 1834, 121, § 44. Art. 11.

Penalty for refusal to deliver up property of the state, on removal from office. 1836, 209, § 11.

No officer exempt from duty until discharged, except when under arrest. 1834, 121, § 44. Art. 10.

Officers convicted of infamous crimes, to be placed under arrest. 1834, 121, § 44. Art. 2.

Election of unsuitable persons to be void. 1837, 276, § 5.

Officers, becoming unfit, may be discharged.

Inspection on the first Tuesday of May. 1834, 121, § 21, 30.

bounds of the corps, in which he was commissioned, such staff officer shall be entitled to an honorable discharge, and shall cease to do duty in such office, after such division is made; and the commanding officer may proceed to fill the vacancy occasioned thereby.

**SECT. 68.** No officer shall be permitted to resign, while under arrest: and no resignation of any officer shall be approved, if such resignation be offered between the first day of May and the first day of November, unless the reasons, offered by the officer wishing to resign within those days, be very urgent.

**SECT. 69.** No general or field officer shall approve a resignation, until the orderly and other books and property of the state, in possession of the resigning officer, are taken care of for the use of the corps, to which such officer belongs, in order that such books and property may be delivered to his successor.

**SECT. 70.** If any person, having held an office in the militia, shall, after his discharge or removal from office, neglect or refuse, after demand made upon him by his successor in office, to deliver over to his said successor any property in his possession, belonging to the state, said person shall forfeit and pay a sum not less than twenty dollars, nor more than one hundred dollars, to the use of the state, to be recovered by indictment before the district court.

**SECT. 71.** No officer shall be considered, as exempted from the duties of his station, except when under arrest, until he shall have been discharged by one of the methods or causes pointed out in section sixty seven, or shall have received a certificate of discharge from the commander in chief.

**SECT. 72.** If any officer shall in due course of law be convicted of any infamous crime, he shall be forthwith put in arrest, and deprived of all military command, until an opportunity shall be had for both houses of the legislature to address the governor for his removal.

**SECT. 73.** No idiot, lunatic, common drunkard, vagabond, pauper, nor any person convicted of any infamous crime, nor any other than white, able bodied, male citizens, shall be eligible to any office in the militia; and whenever it shall appear to the commander in chief, that any person, thus ineligible, has received a majority of votes, cast at any election of officers, he shall not commission him; but, with the advice and consent of the council, shall declare said election null and void, and appoint some person to fill the vacancy. And whenever it shall appear to the commander in chief, that any person commissioned as an officer in the militia of this state, has become an idiot, lunatic, common drunkard or vagabond, he shall, with the advice of the council, forthwith remove him from office, and a new election shall be ordered to fill such vacancy.

**ARTICLE X. INSPECTION, DISCIPLINE, TRAININGS AND REVIEW.**

**SECT. 74.** Every commanding officer of a company shall parade his company on the first Tuesday of May, annually, at one of the clock in the afternoon, for the purpose of inspecting, examining and taking an exact account of all the equipments of his men, and for noting all delinquencies of appearance and deficiencies of equipment, and for correcting his company roll, in order that a thorough

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Penalty, if officers require it.

it shall not be lawful for any officer to parade his men on either of said days, unless in case of invasion made, or threatened, or in obedience to the orders of the commander in chief, except as is herein before excepted; and if any officer, contrary to the provisions aforesaid, shall parade his men on either of said days of election, he shall be liable to be tried by a court martial; and shall moreover forfeit a sum, not less than fifty, nor more than three hundred dollars, to be sued for and recovered, in an action on the case, before any court of competent jurisdiction; one moiety thereof to the use of the person who may prosecute for the same, the other to the use of the state.

Penalty for parading or marching troops within fifty rods of a court house, when court is in session. 1833, 74, § 1.

**SECT. 79.** If the commanding officer of any company, battalion, regiment or brigade of the militia of this state, shall parade, march or exercise the same within the distance of fifty rods from any court house of any county, whilst any judicial court shall be in session therein, unless when called out to suppress insurrection, repel invasion, or enforce the laws, he shall, for every such offence, forfeit and pay a fine not less than twenty, nor more than one hundred dollars, to be recovered by indictment, to the use of the state.

Precedence of companies on parade. 1834, 121. Art. 19.

**SECT. 80.** At all regimental and battalion parades, the several companies shall form in regiment or battalion, according to the rank of the officers present, actually commanding them; and the same rule shall apply in all cases, excepting those in which artillery, cavalry, light infantry and riflemen may, by usage and necessity, be detached from the regiments and battalions.

Rank of officers of different corps, doing duty together. 1834, 121. Art. 15.

**SECT. 81.** Whenever different corps shall parade, join, or do duty together, the senior officer present, according to rank, shall command without regard to corps.

Officers to be assigned to destitute companies on parade. 1834, 121, § 16.

**SECT. 82.** When a company, destitute of commissioned officers, shall parade with other troops, the commanding officer present shall assign some commissioned officer or officers to such destitute company, to command the same, while on parade.

Officers to assign limits to parade. 1834, 121, § 22. 13 Mass. 299.

**SECT. 83.** Every commanding officer, when on duty, is hereby authorized to ascertain and fix necessary limits and bounds to his parade, no road in which the people usually travel to be included; within which no spectator shall have a right to enter, without liberty from such commanding officer; and in case any person shall intrude within the limits of the parade, after once being forbidden, he shall be subject to be confined under guard, during the time of parade, or a shorter time, at the discretion of the commanding officer.

Distribution of cartridges. 1834, 121, § 44. Art. 17.

**SECT. 84.** It shall be the duty of each commanding officer, drawing cartridges in pursuance of the forty second section of this chapter, to cause them to be distributed equally among his men on the parade, and to be used in teaching his men precision in their firing.

Punishment of disorderly soldiers. 1834, 121, § 44. Art. 20.

**SECT. 85.** Any non commissioned officer or private, who shall, while under arms or when on duty, behave himself with contempt to an officer, or shall conduct in a disorderly manner, or excite, or join in, any tumult or riot, or be guilty of any other unmilitary conduct, may be put under guard, and so kept for a longer or shorter time, at the discretion of the commanding officer of the company, not beyond the time, when the company to which he belongs is dis-

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ordered to notify for elections.  
1834, 121, § 24.

any company shall receive orders from the commanding officer of such company, to notify and warn such company, or any part thereof, to meet for the purpose of choosing any officer or officers, it shall be the duty of such non-commissioned officer or private, to give every person, he is so ordered to warn, verbal notice, or to leave him a written or printed notification, at his usual place of abode, specifying the time, place and purpose of said meeting.

ARTICLE XII. EXCUSES.

Excuses must be made within twenty days.  
1834, 121, § 44.  
Art. 31,  
2 Greenl. 181.  
3 Greenl. 38.  
4 Pick. 66.  
15 Pick. 1.

SECT. 91. All excuses for non appearance of non commissioned officers and privates, must be made within twenty days after any training, view of arms, or other military duty, to the commanding officers of their respective companies; and on the delinquent's producing, or causing to be produced, satisfactory evidence of his inability to appear, his commanding officer may excuse him; but all commanding officers of companies are hereby forbidden from receiving any excuse for non-appearance, under any pretence whatever, after the expiration of the twenty days allowed. Any such non commissioned officer or private, who shall neglect to give, or cause to be given, to his commanding officer, such satisfactory evidence of his inability to appear, provided he is not prevented therefrom by severe\* sickness, or other inevitable accident, within the said twenty days, shall forfeit and pay the penalty by law provided for such non appearance. And if a warrant be issued to an individual, who may have held a commission in this state, or any other of the United States, which may not be within the knowledge of the commanding officer of the company in which he is so warned, it shall be his duty to give notice thereof, in manner above provided, or such commission shall not exempt him from such fine, as would otherwise be imposed upon him for non appearance. All commanding officers of companies shall inform, or cause their clerk to be informed, of all excuses for non appearances, which they may allow as good and sufficient.

Persons, who have held commissions, to give notice thereof.  
Consequence of neglect.  
1834, 121, § 44.  
Art. 31.

ARTICLE XIII. FINES AND PENALTIES ON NON COMMISSIONED OFFICERS AND PRIVATES.

Fines for non appearance.  
1834, 121, § 44.  
Art. 26, 27, 28.  
1838, 349, § 4.

SECT. 92. Every non commissioned officer, musician and private, who, being duly ordered to appear at any time and place appointed for military duty, according to law, shall unnecessarily neglect to appear at such time and place, shall forfeit for every such neglect the sums hereinafter mentioned.

For unnecessarily neglecting to appear at the company inspection and view of arms on the first Tuesday of May, five dollars, unless permitted by law to send his arms and equipments on that day for inspection.

At any company training, four dollars.

At any inspection or review, four dollars.

1834, 121, § 44.  
Art. 29.

At any meeting for the choice of officers, two dollars. In none of which cases, in time of peace, shall any substitute be received.

Fines for deficiency of equipments.  
1834, 121, § 44.  
Art. 29, 30.

SECT. 93. Every non commissioned officer or private, who shall appear at the company inspection on the first Tuesday of May, or at any company training, or for any battalion, regimental or brig-

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or warn ; to be recovered by indictment in the district court, or complaint before some justice of the peace, one half to the complainant, and the other half to the state.

Disobedient and disorderly non commissioned officers may be reduced to the ranks. 1834, 121, § 44. Art. 25.

**SECT. 97.** Every non commissioned company officer, who shall be guilty of any disobedience of orders, neglect of duty, or other unmilitary conduct, may be reduced to the ranks by the commanding officer of the regiment, by and with the advice of the commanding officer of the company, to which such non commissioned officer belongs.

Penalties for disobedience of non commissioned staff officers. 1834, 121, § 44. Art. 35.

**SECT. 98.** Every sergeant major, quarter master sergeant, drum major or fife major, who shall be guilty of neglect, or disobedience, of the orders of the commanding officers of their respective regiments or battalions, shall, for each offence, forfeit not less than five, nor more than twenty dollars, to be recovered by the adjutants of their respective regiments or battalions, in an action of debt, in the same manner that fines are recovered by clerks of companies ; one half thereof to said adjutant for his own use, and the other half to be expended by him, under the direction of the field officers, in the repair of the regimental and battalion colors, and of the musical instruments furnished by the state for the use of the companies of his said regiment or battalion, and the purchase of camp colors : and every such non commissioned officer, who shall be guilty of any disobedience of orders, neglect of duty, or other unmilitary conduct, may be reduced to the ranks by their brigadier general, by and with the advice of the commanding officer of the regiment or battalion, to which such non commissioned officer may belong.

May be reduced to the ranks.

**ARTICLE XIV. PROSECUTIONS FOR FINES AGAINST NON COMMISSIONED OFFICERS AND PRIVATES.**

Fines, how recovered. 1834, 121, § 45. 1837, 276, § 12. 1 Mass. 458.

**SECT. 99.** All fines and forfeitures, incurred by non commissioned officers and privates under the provisions of this chapter, the recovery, and the mode of recovery, of which are not herein and hereby specifically provided for, shall be prosecuted for, and recovered by, the respective clerks of the companies, to which such non commissioned officers or privates, incurring any fine or forfeiture as aforesaid, belong, in an action of debt, in any court proper to try the same; and such action may be brought before any justice of the peace for the county, where the company is located, or where the non commissioned officer or private, parent, master or guardian, who may be liable therefor may reside ; and such action shall not be commenced till after twenty days, and shall be commenced within forty days, after such penalty, fine or forfeiture shall have been incurred.

Limitation of actions. 1834, 121, § 44. Art. 31.

Penalty for neglect of clerk to prosecute. 1834, 121, § 45. 1837, 276, § 12.

**SECT. 100.** If the said clerk shall unreasonably neglect, or refuse, to prosecute for any of the fines aforesaid, he shall pay a fine of five dollars, for each and every such neglect, for the use of the company to which he belongs ; to be recovered by an action of debt, to be brought by the commanding officer thereof, before any justice of the peace, in the county where such clerk resides.

How recovered.

If there be no clerk, captain to prosecute. 1834, 121, § 45.

**SECT. 101.** If there be no clerk to prosecute as aforesaid, the captain or commanding officer of the company shall prosecute for said fines, for the use of the company ; and upon neglect so to

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## ARTICLE XV. COURTS MARTIAL.

Courts martial,  
how constitut-  
ed.  
1834, 121, § 36.

SECT. 111. All courts martial shall consist of three members, to be detailed in the manner hereinafter directed.

One of the members of each court shall be designated, in the order under which they shall act, as the president thereof, and in case of his absence at the trial of any cause within their jurisdiction, the senior officer of such court, who shall be present, shall officiate as president pro tempore.

Quorum.

Any two members of said court shall constitute a quorum, for the trial of all causes, coming before them, in the manner hereinafter provided.

One may ad-  
journ.

Any one member of said court may, and it shall be his duty to, adjourn the proceedings thereof from time to time, as to him may appear just, in the absence of the other members.

Appointment  
of marshal and  
orderly officer.  
1834, 121, § 40.

SECT. 112. Whenever any such court shall be in session, the president thereof shall appoint a marshal, whose duty it shall be to preserve order therein, and with the concurrence of either of the associate members, he may also appoint a warrant officer, to attend upon the same.

Members of  
general courts  
martial, how  
appointed.  
1838, 349, § 1.

SECT. 113. Whenever the commander in chief shall deem it necessary to assemble any general court martial, for the trial of any officer above the rank of captain, it shall be lawful for him to appoint the president and members thereof from any division, or divisions, of the militia, which the circumstances of the case and the ends of justice may, in his opinion, require.

Members of  
division courts  
martial, how  
detailed.  
1837, 276, § 13.  
1838, 349, § 7.

SECT. 114. Every court martial for the trial of officers of, and under, the rank of captain, including the regimental staff, shall be ordered by the major general of the division, to which the officer to be tried belongs, to be held within the limits thereof, and he shall regularly detail the members thereof from the roster of his division, according to rank; provided however, that it shall be the duty of the major general to pass such officer or officers, as in his opinion may be interested, or implicated, in the result of the trial; and all officers, so detailed, shall, while in the same office, be ineligible to serve on such court martial a second time, until all other officers in the division, who are not legally disqualified, shall have been detailed as aforesaid.

Special officer  
for summary in-  
vestigation of  
complaints.  
1834, 121, § 43.

SECT. 115. Summary inquiry may be made into the truth and circumstances of any matter, contained in any complaint or allegation, against the conduct of any officer or corps of the militia, by an officer specially appointed for that purpose.

How appointed.  
1837, 276, § 16.

If the complaint be made against any officer above the rank of captain, or corps of militia greater than the command of a captain, the appointment shall be made by the commander in chief; if against any other officers or corps, the inquiry shall be made by appointment of the major general of the division, to which those complained against belong; and it shall be the duty of any officer appointed to make such inquiry, to report the result of his inquiry and investigation, as soon as may be, after he shall have completed the same, to the adjutant general's office, if ordered by the commander in chief; and to the major general, if directed by him.



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7 Pick. 149.  
22 Pick. 498.

To be certified  
to the com-  
mander in chief.

Division advo-  
cate to keep a  
summary of pro-  
ceedings.

1834, 121, § 40.  
Copy of orders  
and records du-  
ly certified, to  
be evidence in  
suits.

1837, 276, § 10.  
13 Maine, 268.

Division advo-  
cate to enforce  
payment of  
fine and costs.  
1834, 121, § 39.

Judgment and  
execution in  
such suits.  
1834, 121, § 39.  
22 Pick. 498.

Action not to  
abate in certain  
cases.  
1840, 52.

Compensation  
of members.  
1834, 121, § 40,  
41.

red against him, involving an offence against military law, or the principles of duty and usage, attached to his office, the court shall sentence him to be reprimanded in orders, and to pay a fine of not less than ten, nor exceeding fifty dollars, together with part or all of the costs of court, or to either, according to the nature of the offence; or to be removed from office, with, or without, the payment of such fine and costs, at the discretion of the court; and in addition thereto, if the court think proper, to be disqualified for, and incapable of, holding any military office under this state, for life or for a term of years. And the judgment or sentence of the court shall, as soon as may be, be certified by the president, under seal of the court, to the commander in chief, to be promulgated and carried into effect.

**SECT. 121.** The division advocate shall keep a summary record of the proceedings of each court, from day to day, under the direction of the court.

**SECT. 122.** A copy of the record of any court martial, certified by the president of any such court, together with a duly authenticated copy of the order convening said court, shall be sufficient and conclusive evidence to sustain, in any court, any action commenced for the recovery of any fine, or costs, or part of costs, or either, agreeably to the provisions of the two following sections.

**SECT. 123.** In the order of the commander in chief promulgating the sentence of any court martial, as herein directed, if such sentence shall include the payment, by any officer, of any fine and costs, or either, the division advocate of such division, shall be directed, and it shall be his duty, to enforce the payment of such fine and costs, by an action of debt to be commenced in his own name, within thirty days next succeeding such order, unless the same shall be sooner paid to him by such officer.

**SECT. 124.** The court, before whom such action shall be commenced, shall render judgment therein, and issue execution accordingly, against the property and body of the defendant, for the amount of such fine and costs, including the costs of such action, upon proof that the same has been awarded by the sentence of a court martial, in the manner herein provided; and no action for such fine and costs, or either, shall abate, in consequence of the death, resignation, removal, or expiration of the term of office, of the division advocate, who may have commenced the same; but such action may be prosecuted afterwards to final judgment by his successor, and the court, before which the same may be pending, may order such continuances and amendments and notices to the successor, as may be necessary, and render such judgment, as the rights of the parties may require. The fine and costs, which shall be included in such sentence, shall be paid over by the division advocate, when collected, to the treasurer of the state, for the use of the state.

**SECT. 125.** The compensation of the officers and witnesses shall be as follows:

To each member of the court, and to the division advocate, for each day spent in holding a session of said court, two dollars, and for every mile's travel, four cents.

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For excusing any under his command, for unnecessary absence or deficiency ;

1834, 121, § 44.  
Art. 16.

For neglect, or refusal, to make a draft, or detachment, when legally ordered under the authority of the commander in chief ;

1834, 121, § 44.  
Art. 18.

For parading his men on either of the days of election, mentioned in section seventy eight, contrary to the provisions thereof ;

For neglecting or refusing, after receiving his commission, forthwith, to take and subscribe the oaths required by the constitution, to qualify him to discharge the duties of his office.

Limitation of prosecutions before courts martial.  
1834, 121, § 44.  
Art. 6.

**SECT. 130.** No officer shall be tried by a court martial for any offence, which shall have been committed more than one year, previous to the time when a complaint shall have been made in writing therefor, unless he shall have repeated such offence in two or more successive years ; or by reason of having absented himself, or some other manifest impediment, he shall not have been amenable to justice within that period.

Arrests on the field of parade.  
1834, 121, § 44.  
Art. 8.

**SECT. 131.** No arrest on the field, for offences committed on parade, shall be legal, unless made, by the commanding officer present, in writing ; and unless such commanding officer shall, within fifteen days, exhibit to the competent authority his complaint in writing, setting forth the cause of arrest.

**ARTICLE XVI. PROCEEDINGS ON DRAFTS FOR ACTUAL SERVICE.**

Persons drafted to pay fifty dollars, or procure a substitute within 24 hours, or be liable to march as soldiers.  
1834, 121, § 29.

**SECT. 132.** Whenever, in case of actual, or threatened, invasion, insurrection, or other public danger or emergency, the militia shall be ordered out, or any part thereof shall be ordered to be detached, or drafted, by the commander in chief, any person, who shall be ordered out, detached or drafted, in pursuance of, and obedience to, such orders, and shall not, within twenty four hours after he shall be notified thereof, pay a fine of fifty dollars to the commanding officer of the company, to which he belongs, or procure an able bodied man in his stead, such person, on being ordered to march to the place of rendezvous, shall be considered, as a soldier belonging to the detachment, and be dealt with accordingly.

Fines appropriated to hire substitutes.  
1834, 121, § 29.

**SECT. 133.** All fines, paid as aforesaid, shall be appropriated to the hire of men, to complete the detachment.

Officers, how detailed ; non commissioned officers and privates, how drafted.  
1834, 121, § 29.

**SECT. 134.** The officers of any detachment, ordered to be made, as aforesaid, shall be regularly detailed from the rosters ; and the non commissioned officers and privates, by lot, from the company rolls.

Drafts from companies, not organized.  
1834, 121, § 29.

**SECT. 135.** When any company shall not be organized, the officer commanding the brigade, or regiment, shall, either by himself or some officer under him, proceed to make and complete the detachment from such unorganized company.

Persons detached, to furnish themselves with three days provision.  
1834, 121, § 29.

**SECT. 136.** Whenever the militia or any part thereof, after having been ordered out or detached, as aforesaid, shall be ordered to march for the service of the state, each non commissioned officer and private, so ordered to march, shall provide and take with him three days' provisions, unless otherwise ordered.

Selectmen to furnish further supplies in carriages.  
1834, 121, § 29.

**SECT. 137.** The selectmen of every town, and aldermen of every city, and the assessors of every plantation, to which the men detached, as aforesaid, and ordered to march for the service of the state, belong, shall provide and cause carriages to attend them with

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- court martial, there to be publicly reprimanded by the president ; if non commissioned officers or soldiers, every person so offending shall, for the first offence, forfeit twenty cents, to be deducted out of his next pay ; for the second offence, he shall not only forfeit a like sum, but be confined twenty four hours ; and, for every like offence, shall suffer and pay in like manner ; which money, so forfeited, shall be applied to the use of the sick soldiers of the troop or company, to which the offender belongs.
- Profanity.** II. Any non commissioned officer or soldier, who shall use any profane oath or execration, shall incur the penalties expressed in the foregoing article, and if a commissioned officer be thus guilty of profane cursing or swearing, he shall forfeit and pay, for each and every such offence, sixty seven cents.
- Seditious or disrespectful words.** III. Any officer or soldier, who shall presume to use traitorous or disrespectful words against the authority of the United States in congress assembled, or the legislature of this state, if a commissioned officer, he shall be cashiered ; if a non commissioned officer or soldier, he shall suffer such punishment, as shall be inflicted upon him by the sentence of a court martial.
- Contempt towards superior officers.** IV. Any officer or soldier, who shall behave himself with contempt or disrespect towards the commander in chief, or any general or commanding officer of the troops or militia of this state, or shall speak words tending to his hurt or dishonor, shall be punished according to the nature of his offence, by the judgment of a court martial.
- Mutiny.** V. Any officer or soldier, who shall begin, excite, or join in, any mutiny or sedition, in the troop, company or regiment, to which he belongs, or in any other troop or company in the service of the state, or in any party, post, detachment or guard, on any pretence whatsoever, shall suffer such punishment, as by a court martial shall be inflicted.
- Not endeavoring to suppress mutiny.** VI. Any officer, non commissioned officer or soldier, who, being present at any mutiny or sedition, doth not use his utmost endeavors to suppress the same ; or coming to the knowledge of any intended mutiny, doth not without delay give information thereof to his commanding officer, shall be punished by sentence of a court martial, according to the nature of his offence.
- Assaulting superior officer, or disobedience of orders.** VII. Any officer or soldier, who shall strike his superior officer, or draw or lift up any weapon, or offer any violence against him, being in the execution of his office, on any pretence whatsoever, or shall disobey any lawful commands of his superior officer, shall suffer such punishment, as shall, according to the nature of his offence, be inflicted upon him by the sentence of a court martial.
- Desertion.** VIII. Any non commissioned officer or soldier, who shall desert, or without leave from his commanding officer, absent himself from the troop or company, to which he belongs, or from any detachment of the same, shall, upon conviction thereof, suffer death, or such other punishment, as shall be inflicted by the sentence of a general court martial.
- Advising to desert.** IX. Any officer or soldier, who shall be convicted of having advised, or persuaded, any other officer or soldier to desert, shall suffer such punishment as shall be inflicted by the sentence of a court martial.

- CHAP. 16.** convicted at a court martial of having sold, or, designedly or through neglect, wasted, the ammunition delivered out to him, to be employed in the service of the state, shall, if a non commissioned officer, be reduced to a private, and if a soldier, shall suffer such punishment as shall be inflicted upon him by a court martial.
- ing ammunition.**
- Absence without leave.** xviii. No officer or soldier shall be out of his quarters or camp, without leave from his commanding officer, upon penalty of being punished according to the nature of his offence, by the sentence of a court martial.
- Absence one mile from camp without leave.** xix. All non commissioned officers and soldiers, who shall be found one mile from the camp, without leave in writing from their commanding officer, shall suffer such punishment, as shall be inflicted on them by the sentence of a court martial.
- Not retiring to quarters at beating of tattoo.** xx. Every non commissioned officer and soldier shall retire to his quarters or tent, at the beating of the tattoo, in default of which, he shall be punished according to the nature of his offence, by the sentence of a court martial.
- Officers and soldiers to repair to parade at time fixed.** xxi. No officer, non commissioned officer or soldier shall fail to repair, at the time fixed, to the place of parade or exercise, or other rendezvous appointed by his commanding officer, if not prevented by sickness or some other evident necessity; nor shall go from the said place of rendezvous, or from the guard, without leave from his commanding officer, before he shall be regularly dismissed or relieved; on the penalty of being punished according to the nature of his offence, by sentence of a court martial.
- Intoxication.** xxii. Any commissioned officer, who shall be found drunk on his guard, party or other duty, under arms, shall be cashiered for it; and any non commissioned officer or soldier, so offending, shall suffer such punishment as shall be inflicted by the sentence of a court martial.
- Sentinel sleeping on his post.** xxiii. Any sentinel, who shall be found sleeping upon his post, or shall leave it, before he shall be regularly relieved, shall suffer such punishment, as shall be inflicted by the sentence of a general court martial.
- Making false alarms.** xxiv. Any person, belonging to the forces employed in the service of this state, who, by discharging fire arms, drawing of swords, beating of drums, or by any other means whatsoever, shall occasion false alarms in camp, garrison or quarters, shall suffer such punishment as shall be ordered by the sentence of a general court martial.
- Quitting platoon or division without leave.** xxv. Any officer or soldier, who shall, without urgent necessity, or without the leave of his superior officer, quit his platoon or division, shall be punished according to the nature of his offence, by the sentence of a court martial.
- Insulting or abusing persons bringing provisions.** xxvi. No officer or soldier shall do violence, or offer any insult or abuse to any person, who shall bring provisions or other necessaries to the camp, garrison or quarters of the forces of this state, on pain of suffering such punishment as a court martial shall direct.
- Abandoning post in time of engagement.** xxvii. Any officer or soldier, who shall abandon any post committed to his charge, or shall speak words inducing others to do the like, in time of an engagement, shall suffer death, or such other punishment, as shall be inflicted by the sentence of a general court martial.

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Oath of mem-  
bers.

“ You swear, that you will well and truly try and determine, according to your evidence, the matter now before you, between the state of Maine and the prisoner to be tried; that you will duly administer justice, according to the rules and articles for governing the troops of the said state, without partiality, favor or affection; and, if any doubt shall arise, which is not explained by the said articles, according to your conscience, the best of your understanding, and the custom of war in like cases; that you will not divulge the sentence of the court, until it shall be approved of by the commanding officer; and that you will not, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence, as a witness, by a court of justice in a due course of law. So help you God.”

Which oath being administered to the members of the court, the president shall administer the following oath to the person, prosecuting as aforesaid:

Oath of prosec-  
uting officer.

“ You A. B., do swear, that you will not, upon any account, at any time whatsoever, disclose, or discover, the vote or opinion of any particular member of the court martial, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law. So help you God.”

Department of  
members; mode  
of giving votes.

**XL.** All members of a court martial are to behave with calmness and decency; and in the giving their votes are to begin with the youngest in commission.

Witnesses to be  
examined under  
oath.

**XL I.** All persons, who give evidence before a court martial, shall be examined upon oath; which oath shall be administered by the president of the court martial, in the following form:

Form of oath.

“ You swear, the evidence you shall give, in the cause now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God.”

No sentence of  
death, without  
concurrence of  
two thirds of  
the members.

**XLII.** No sentence of death shall be given against any offender, by any general court martial, unless two thirds of the members shall concur therein.

Punishment for  
refusal of wit-  
nesses to testify.

**XLIII.** All persons, called to give evidence in any cause before a court martial, who shall refuse to give evidence, shall be punished for such refusal, at the discretion of such court martial.

Rank of officers  
for trial of a field  
officer.

**XLIV.** No field officer shall be tried by any person, under the degree of a captain: nor shall any proceedings or trials be carried on, excepting between the hours of sunrise and sunset.

Proceedings to  
be between  
sunrise and sun-  
set.

**XLV.** No sentence of a court martial shall be put in execution, until after report shall be made to the commanding officer, where the court martial shall be held; and his orders to be issued for carrying such sentence into execution.

Sentence to be  
reported to  
commanding  
officer.

Regimental  
courts martial.

**XLVI.** The commissioned officers in any regiment may, by the appointment of their colonel or commanding officer, hold regimental courts martial for the inquiring into such disputes, or criminal matters, as may come before them, and for inflicting punishment for small offences; and shall give judgment by the majority of voices; but no sentence shall be executed till the commanding officer, not being a member of the court martial, shall have confirmed the same.

How constitut-  
ed.

**XLVII.** No regimental court martial shall consist of less than five officers, excepting in cases where that number cannot be conven-

**CHAP. 16.** and shall be subject to be tried by courts martial, in like manner with other officers and soldiers.

tillery, subject to these rules. To be tried by their own officers, if practicable.

**LVIII.** For differences arising amongst themselves, or in matters relating to their own corps, the courts martial may be composed of their own officers; but where a sufficient number cannot be assembled, or in matters, wherein their corps are interested, the officers of artillery shall sit in courts martial, with the officers of other corps.

No sentence of death, except as expressly provided.

**LIX.** No person shall be sentenced to suffer death, except in the cases, expressly mentioned in the foregoing articles.

Fines to be appropriated to sick or necessitous soldiers.

**LX.** The field officers of each and every regiment shall appoint some suitable person, belonging to such regiment, to receive such fines, as may arise within the same, for any breach of any of the foregoing articles, and shall direct the same to be properly applied to the relief of such sick or necessitous soldiers, as belong to such regiment; and such persons shall account with such officer for all fines received, and the application thereof.

Offences not capital, though not herein specified, to be tried by general or regimental courts martial.

**LXI.** All crimes, not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles, are to be taken cognizance of by a general, or regimental, court martial, according to the nature and degree of the offence, and be punished at their discretion.

Officers or soldiers accused of certain crimes, to be surrendered to the civil authority.

**LXII.** Whenever any officer or soldier shall be accused of a capital crime, or having used violence or committed any offence against the person or property of the good people of this or either of the United States, such as is punishable by the known laws of the land, the commanding officer or officers of every regiment, troop or party, to which the person or persons, so accused, shall belong, are hereby required, upon application duly made by, or in behalf of, the party or parties injured, to use his utmost endeavors to deliver over such accused person or persons to the civil magistrate; and likewise to be aiding and assisting the officers of justice in apprehending and securing the person or persons, so accused, in order to bring them to trial. And if any commanding officer or officers shall wilfully neglect, or shall refuse, upon the application aforesaid, to deliver over such accused person or persons to the civil magistrate, or to be aiding and assisting the officers of justice in apprehending such person or persons, such officer or officers, so offending, shall be cashiered.

**CHAP. 17. SECT. 20.** School districts, declared to be

- corporations.
- 21. How to be named or described.
- 22. Who are legal voters.
- 23. Mode of calling meetings.
- 24. Manner of notifying.
- 25. Districts may prescribe the mode of notifying.
- 26. Moderator and clerk.
- 27. School district committee.
- 28. General powers of school districts.
- 29. Clerk to certify to assessors, when money is raised.
- 30. Assessors to assess the same, within thirty days.
- 31. Mode of collection.
- 32. Powers of collectors.
- 33. Powers of town treasurers in such cases.
- 34. Abatements of such taxes.
- 35. Sums collected, to be at disposal of the district committee.
- 36. Compensation of assessors and collectors.
- 37, 38. Of schools to be kept by mistresses.
- 39. Ages for admission to schools of master, or mistress.
- 40. Districts to elect agents, by ballot.

**ARTICLE III. OF THE DUTIES AND POWERS OF THE SUPERINTENDING SCHOOL COMMITTEES AND SCHOOL AGENTS; AND THE QUALIFICATIONS AND DUTIES OF INSTRUCTORS.**

- 41. Powers and duties of superintending school committees.
- 42. Powers and duties of school agents.
- 43. Qualifications of school masters.
- 44. Qualifications of school mistresses.

**SECT. 45.** Forfeiture for teaching, without certificates of qualification.

- 46. Districts formed in more than one town, how superintended.
- 47. Instructors in colleges, academies and schools to inculcate morality and virtue.

**ARTICLE IV. SPECIAL PROVISIONS RELATING TO THE REGULATION AND ENDOWMENT OF SCHOOLS, AND AFFECTING THE GOVERNMENT AND DISCIPLINE OF LITERARY INSTITUTIONS.**

- 48. Forfeitures, how recovered and appropriated.
- 49. Penalty for wrong appropriation of forfeiture.
- 50. State school fund, arising from sale of land.
- 51. Tax on banks.
- 52. Selectmen to make statistical returns to the secretary of state.
- 53. Secretary to notify the state treasurer of the number of children in each town.
- 54. Treasurer to apportion the school fund to the towns.
- 55. Secretary to furnish, to selectmen, blank forms for returns.
- 56. Tenure of office, of presidents of colleges.
- 57. Graduation fees to be paid into college treasuries.
- 58. Inholders and certain others, not to give credit to students.
- 59. Persons violating this provision, not to be licensed.
- 60. Forfeiture for such violation.
- 61. Penalty for disturbance of schools.
- 62. Provisions of this chapter, applicable to cities and plantations.

**ARTICLE I. OF THE GENERAL DUTIES OF TOWNS.**

**SECTION 1.** The school districts, in the several towns in this state, shall remain as now established, until altered or discontinued, according to law.

**SECT. 2.** The inhabitants of every town, at their annual meeting, may determine the number and limits of the school districts, within such town; and, if necessary, may divide or discontinue any such district; or annex it to any other district, in such town, with such reservations and conditions, as may be proper to preserve the individual rights and obligations of the inhabitants thereof.

**SECT. 3.** Every town, at its annual meeting for the choice of town officers, shall choose an agent for each school district in such town; or, at such meeting, the town may, by vote, authorize the several school districts, to choose one or more agents for themselves, for the year ensuing.

**SECT. 4.** Whenever it shall be found convenient to form a school

Establishment of school districts. 1834, 129, § 6. 7 Pick. 106.  
Same subject. 4 Mass. 534. 5 Pick. 323. 11 Pick. 260. 12 Pick. 206.

District agents, how chosen. 1834, 129, § 3. 21 Pick. 75.

Formation of

**CHAP. 17.** which expense may be added to the next town tax of such delinquent parent, master or guardian.

Superintending school committee. 1834, 129, § 3.

**SECT. 12.** Every town, at its annual meeting, shall choose, by ballot, a superintending school committee, a majority of whom shall constitute a quorum, consisting of not less than three, nor more than five persons; who shall be duly sworn, and paid not more than one dollar per day, for their services, unless otherwise ordered by the town.

Forfeiture for neglect to choose. 1834, 129, § 5.

**SECT. 13.** Every town, which shall, in any year, neglect to choose such superintending committee, shall forfeit and pay not less than thirty, nor more than two hundred dollars.

Privileges allowed to remote parts of a town. 1834, 129, § 18.

**SECT. 14.** Any portion of a town not containing inhabitants enough, for a convenient separate organization as a district, and too remote for annexation to any district already formed, may be omitted in districting the town, to which it belongs; and in such case, the assessors of such town shall appropriate their proportion of school money, according to the number of children, of the ages specified in section, seven, to be expended, by such inhabitants, for the purpose of instruction, in such manner, as the superintending committee shall order or approve, in writing under their hands.

Towns may compel districts to raise money for certain objects. 1834, 129, § 12.

**SECT. 15.** Whenever, at any meeting of a school district, legally called, for raising money for any particular purpose, a majority of the legal voters present shall be opposed to the raising of any sum of money, deemed by the minority sufficient for that purpose, the selectmen of the town, on application, in writing, of any five or more voters in such district, made within thirty days after such meeting, shall insert, in their warrant for calling the next town meeting on town affairs, an article, requiring the opinion of the town on the subject of disagreement; and, if the town, at such meeting, shall think it necessary or expedient, they may require a sum sufficient for the purpose aforesaid, if exceeding what said district were willing to raise, to be assessed upon the polls and estates in such district; and the same shall, thereupon, be assessed and collected, and paid over in the same manner, as if originally raised by such district, as provided in the sections, numbered from twenty eight to thirty six, inclusive, of this chapter.

Powers of selectmen in location of school houses. 1834, 129, § 13. 21 Pick. 75.

**SECT. 16.** At any district meeting, called for the purpose of erecting or locating a school house, in any district where none exists, or of removing or erecting any such school house, in a different place from that previously occupied for the purpose, if a disagreement shall arise, and the voters in favor of the object, in either case, shall be less than two thirds, of the legal voters in said district, the clerk, at the meeting, shall make a record of the fact; and the selectmen of the town, on application, in writing, from any one or more of the voters in such district, or of any committee of such district, made within thirty days thereafterwards, may appoint a time and place, within the district, to hear the inhabitants thereof, on the subject matter of such disagreement; and give such notice, as is required for a legal meeting of the inhabitants of said district; and, after such hearing, may decide, where such school house shall be placed, and shall give a certificate of their determination to the clerk of the district, who shall forthwith enter the same upon his records:



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be called by the selectmen of the town, containing such district ; or of the oldest town, out of which any part of said district is taken ; or by the school district agent or agents, if any have been appointed.

Manner of notifying.  
1834, 129, § 11.  
14 Mnsa. 315.  
12 Pick. 206.

**SECT. 24.** On receiving any such application, the selectmen of the town, or the district agent, as the case may be, shall cause notices specifying the time, place and purposes of the meeting, seven days previous to the time appointed, to be posted up in two or more public places, within the district, one of which must be on the school house, if there be any in the district ; or to be published in a newspaper printed in the town, where such district is located, if there be any. The certificate of such selectmen or agent, or of any person required by their warrant, to give such notice, returned at the time and place of meeting, shall be evidence of the notice, stated in such certificate to have been given.

Districts may prescribe the manner of notifying.  
1834, 129, § 11.  
4 Greenl. 44.

**SECT. 25.** Every school district, at any legal meeting thereof, may determine the manner, in which notice of its future meetings shall be given.

Moderator and clerk.  
1834, 129, § 11.  
4 Greenl. 44.  
21 Pick. 75.

**SECT. 26.** At every such meeting, a moderator shall be chosen, who shall have the same powers and duties, as a moderator of a town meeting ; and, at the first meeting, every year, a clerk shall also be chosen, and shall be duly sworn by the moderator, or a justice of the peace. It shall be the duty of the clerk, to make a fair record of all votes, passed at any meeting of the district during the year, and until another shall be chosen in his place and sworn ; and he may certify copies from the records of such district.

School district committee.  
1834, 129, § 11.

**SECT. 27.** Such district may, at any legal meeting, choose a committee to superintend the laying out and expending of the moneys, raised by such district, agreeably to their votes, for any purposes mentioned in the following section ; and to examine and allow such accounts, as they may find correct ; and to draw orders on the town treasurer, for the amount of the moneys raised.

General powers of school districts.  
1834, 129, § 8.  
3 Fairf. 254.  
5 Pick. 323.

**SECT. 28.** The inhabitants of any school district, qualified to vote in town affairs, at any legal meeting called for the purpose, shall have power :

To raise money for school houses, &c.

*First.* To raise money for the purpose of erecting, repairing, purchasing and removing a school house, and of purchasing land upon which the same may stand, and utensils, and also for erecting or removing out buildings, connected therewith ; and to sell and dispose of any such property, as may be necessary and proper ;

Location of the same.

*Secondly.* To determine, where the school house shall be erected, or located in said district ;

Age and other terms of admission to schools.

*Thirdly.* To determine at what age the youth, within such district, may be admitted into the schools kept by a master or mistress respectively, and whether, and upon what terms, scholars may be admitted into such schools from other school districts, or from other towns or places ; and,

When the schools shall commence.

*Fourthly.* If they think proper, to instruct the agent at what time their schools shall commence ; with which directions, the agent shall comply, so far as practicable.

Clerk to certify to assessors, when money is raised.

**SECT. 29.** When any money shall be voted to be raised by any district, pursuant to the first specification of the preceding section, the clerk shall forthwith, or within such time as the district may

**CHAP. 17.**

Ages for admission to schools of master, or mistress. 1831, 129, § 1.

Districts to elect agents by ballot.

Powers and duties of superintending school committees. 1831, 129, § 3.

Filling vacancies.

Examining teachers.

Selecting books.

Visiting schools.

Dismissing teachers. 3 Greenl. 450. 16 Maine 184.

Expelling scholars.

Return of the state of the schools.

**SECT. 39.** Whenever the schools, in any district, shall be kept in part by a mistress, and in part by a master, the inhabitants of such district, at a legal meeting, may determine by vote, or may authorize the superintending committee to determine, from time to time, what description of scholars shall attend each school, respectively.

**SECT. 40.** Every school district, when authorized to elect their agent, as provided in sections, three and five, of this chapter, shall choose him by ballot, at any meeting to be called for the purpose.

**ARTICLE III. OF THE DUTIES AND POWERS OF THE SUPERINTENDING SCHOOL COMMITTEES, AND SCHOOL AGENTS; AND THE QUALIFICATIONS AND DUTIES OF INSTRUCTORS.**

**SECT. 41.** All superintending school committees, appointed, as provided in section, twelve, of this chapter, shall perform the following duties, to wit:

*First.* To fill any vacancy happening in their board, during their term of office;

*Secondly.* To examine all candidates, offering to teach in the town;

*Thirdly.* To direct the general course of instruction, and what books shall be used in the respective schools;

*Fourthly.* To visit and inspect the several schools, and inquire into the regulations and discipline thereof, and of the proficiency of the scholars therein; and to use their influence and best endeavors, that the youth in the several districts regularly attend the schools; and particularly to provide, that one or more of the board shall visit each school within the town, at least twice, during the term for which it is kept, once within two weeks from the commencement thereof, and once within two weeks before the close thereof;

*Fifthly.* After due notice, and a candid investigation of the facts, to dismiss any school master or mistress, who shall be found, in their opinion, incapable or unfit to teach, or whose services are believed by them to be unprofitable to such school, notwithstanding their having procured the requisite certificates; provided, that such dismissal shall not operate to deprive such master or mistress of their right to compensation, for services previous to such dismissal;

*Sixthly.* To expel, from any school, any obstinately disobedient and disorderly scholar, after a proper investigation of his behavior, if found necessary for the peace and usefulness of the school; also to restore him to the school, on satisfactory evidence of his repentance and amendment;

*Seventhly.* Within fourteen days immediately preceding the annual town meeting, to make, to the selectmen, a return, according to the best of their knowledge and belief, of the time that schools have been kept in the several districts, designating how much of the time, they have been kept by masters or mistresses, respectively, and the average number of scholars, who have attended each of the schools; and, unless the town shall otherwise direct, to make a written report at the annual meeting, next after their appointment, of the standing of, and progress made in, the several schools, in the various branches of learning therein taught, and the success, which may have attended the mode of instruction and government of their respective teachers.

**CHAP. 17.** and shall be barred from recovering any pay for teaching the same.

Districts formed in more than one town, how superintended. 1834, 129, § 7.

**SECT. 46.** When any school district shall have been formed, from parts of two or more towns, the superintending school committee of the oldest town, from which any part of such district is formed, shall have the same powers, and perform the same duties, in giving certificates of qualification to instructors, directing what books shall be used, and in visiting, superintending and disciplining the school, as they might have and perform, if such district were wholly within their town.

Instructors in colleges, academies and schools, to inculcate morality and virtue. 1834, 129, § 2.

**SECT. 47.** It shall be the duty of the presidents, professors and tutors of colleges, and of the preceptors and teachers of academies, and all other instructors of youth, whether in public or private institutions, to take diligent care, and exert their best endeavors, to impress on the minds of the children and youth, committed to their care and instruction, the principles of morality and justice, and a sacred regard to truth; love to their country, humanity, and universal benevolence; sobriety, industry and frugality; chastity, moderation and temperance; and all other virtues, which are the ornaments of human society. And it shall be the duty of such instructors, to endeavor to lead those under their care, as their ages and capacities will admit, into a particular understanding of the tendency of the beforementioned virtues, to preserve and perfect a republican constitution, and secure the blessings of liberty, as well as to promote their future happiness; and the tendency of the opposite vices, to slavery, degradation and ruin.

**ARTICLE IV. SPECIAL PROVISIONS, RELATING TO THE REGULATION AND ENDOWMENT OF SCHOOLS, AND AFFECTING THE GOVERNMENT AND DISCIPLINE OF LITERARY INSTITUTIONS.**

Forfeitures, how recovered and appropriated. 1834, 129, § 19.

**SECT. 48.** All forfeitures and penalties, for the breach of any of the foregoing provisions of this chapter, shall be recovered, by indictment, before any court of competent jurisdiction; and it shall be the duty of all grand jurors, to make due presentment thereof, in all cases that shall come to their knowledge: and such penalty, when recovered, shall, in all instances, be paid into the treasury of the town, where the same was incurred, for the support of schools therein, in addition to the amount required to be raised by the sixth section of this chapter; but the costs of prosecution, when recovered, shall be paid into the county treasury.

Penalty, for wrong appropriation of forfeiture. 1834, 129, § 19.

**SECT. 49.** If any town shall neglect, for one year, so to appropriate and expend any fine or penalty, it shall forfeit a sum, equal to the said fine or penalty, to the use of any person, who may sue therefor, in an action of debt.

State school fund, arising from sale of lands. 1828, 403, § 2.

**SECT. 50.** The treasurer of the state shall keep a separate account of all moneys, he may have received, or may hereafter receive, from the sales of land by the land agent, or from the notes taken therefor, pursuant to the provisions of the first section of an act passed February twenty third, in the year, eighteen hundred and twenty eight, entitled "an act, providing for the promotion of education;" and the same shall constitute a permanent fund, to be reserved for the benefit of town or district schools. The fund shall

**CHAP. 17.** the selectmen, under the provisions of the forty first section of this chapter.

Tenure of office, of presidents of colleges.  
1831, 517, § 1.

**SECT. 56.** The tenure of office of the president of each college, in this state, shall be such, that he shall be removable, at any time, at the pleasure of the trustees and overseers, whose concurrence is necessary for an election to the same office.

Graduation fees to be paid into college treasuries.  
1831, 517, § 2.

**SECT. 57.** All fees paid by any person for any diploma, or any medical degree, granted or conferred by either of the colleges in this state, shall be paid into the treasury for the use of such college; and no part thereof shall be received, as a prerequisite of office, by any officer of the college.

Innholders and certain others, not to give credit to students.  
1821, 167, § 1.  
1 Pick. 177.

**SECT. 58.** No innholder, tavern keeper, retailer, confectioner, or keeper of any shop, or boarding house, for the sale of drink or food, or any livery stable keeper, for horse or carriage hire, shall give credit to any undergraduate, or pupil, of any college or other institution in this state, incorporated for the instruction of youth, without the consent of the president, or such officer of such college or other institution, as may be authorized, thereto, by the government thereof, nor in violation of any rules and regulations thereof.

Persons violating this provision, not to be licensed.  
1821, 167, § 2.

**SECT. 59.** No person shall be licensed by the selectmen of any town, for either of the employments aforesaid, if it shall appear, that he has, within the year last past, given credit to any such undergraduate, or pupil, contrary to the provisions of the preceding section.

Forfeiture for such violation.  
1821, 167, § 3.

**SECT. 60.** If any person shall give credit to any such undergraduate, or pupil, contrary to the said provisions, he shall forfeit a sum equal to the amount, so credited, whether the same shall have been paid, or not; to be recovered by the treasurer of such college or other institution, in an action of debt; one half to the use of such college or institution, and the other half to the use of the town, where the same is established.

Penalty for disturbance of schools.  
1840, 66, § 1, 2.

**SECT. 61.** If any person shall enter any school house, or other place of instruction, during school hours, and shall wilfully interrupt or disturb the teacher or pupils, there assembled, by loud speaking, rude or indecent behavior, signs or gestures, he shall pay a fine of not less than two, nor more than twenty dollars, to be recovered by complaint, before any justice of the peace, or by indictment and conviction, in the district court.

Provisions of this chapter, applicable to cities and plantations.

**SECT. 62.** In the construction of this chapter, the word "town" shall include "city" and "plantation," except where such construction may be inconsistent with the context; and the duties and powers of the selectmen shall be, in the same manner, attributed to the aldermen of cities, and assessors of plantations; and other officers of cities and the plantations, respectively, shall be included in the description of town officers, having like authority in other cases.

**CHAP. 18.** being so assembled, the members may choose a clerk, who shall be sworn to the faithful discharge of the duties of his office, and also two or more assessors, a collector, treasurer, standing committee, and any other needful officers.

The assessors shall manage the prudential concerns of the parish, where no other persons are appointed for that purpose, and shall be duly sworn.

Powers of moderator.  
1821, 135, § 4.

**SECT. 5.** The moderator of any meeting shall have power to preserve order, and manage the business, and may administer the oath of office to the clerk and the assessors.

When meetings may be called.  
1821, 135, § 5.

**SECT. 6.** When five members of any parish shall, in writing, request the assessors to call a meeting, or insert any particular article in the warrant for calling a parish meeting, it shall be their duty so to do.

How called, if assessors refuse.  
1821, 135, § 5.

**SECT. 7.** When assessors unreasonably refuse to call a meeting of the parish, or insert an article requested, as stated in the preceding section, any justice of the peace in the county, on the written application of five or more members thereof, may issue his warrant to one of the applicants, who shall notify such meeting, in the manner prescribed in the first section, or the manner agreed on by vote, if any such exists.

For what purposes parishes may raise money.  
1821, 135, § 6.  
1 Mass. 181.  
3 Mass. 419.  
6 Greenl. 171.  
8 Pick. 494.

**SECT. 8.** Every parish may, at a legal meeting, vote and grant such sums of money, as may be necessary, for the support of the public ministry of religion, and for building, repairing or removing houses of public worship, and other necessary parish charges; and such sums may be assessed and collected by the same rules, as state taxes.

How assessed on pews.  
1821, 135, § 6.

**SECT. 9.** Where any house of worship belongs to the members of the parish, or where the same and the fee of the land, on which it stands, is vested in trustees, for the use of a parish, such parish may, if they see cause, assess any moneys voted as aforesaid, wholly, or in part, on the pews or seats of individual owners, whether members of such parish or religious society, or not; and they may be present and vote in granting all sums to be assessed on such pews or seats.

Payment enforced by sale of pews.  
1821, 135, § 6.

**SECT. 10.** When taxes, so assessed on pews and seats, shall remain unpaid, for six months after the assessment thereof, the treasurer shall sell the same at auction, first posting notice of such intended sale at the principal outer door of such house of worship, three weeks before the time of sale, stating the numbers, if any, of the pews or seats, and the amount of the tax due on each; and shall execute and deliver to the purchaser of any pew or seat, a deed thereof; paying over to the owner the overplus, if any, of the money arising from the sale, after deducting the amount of tax and the incidental charges.

Owner may direct, as to appropriation of his pew tax.  
1821, 135, § 7.

**SECT. 11.** All moneys paid by any person, for the support of public worship, by a tax on any pew or seat, as above mentioned, shall be paid over to such teacher of his own religious sect, as he may designate, he leaving a written notice of such designation with the clerk of such parish, on or before the annual meeting, unless such owner shall use such pew or seat, himself, or by his family, or other person occupying it under him; and it shall be sufficient, that

**CHAP. 18.** shall be valid any longer, than during such alienor's continuing in the ministry.

Same subject.  
1821, 42, § 1.  
1821, 135, § 10.

**SECT. 24.** No alienation of such estate, by such elders, deacons, trustees, stewards or presiding officers, shall be valid any longer, than the continuance in office of such alienors, if made, without consent of the church; or, if made, by church wardens, without the consent of the vestry.

Limitation, as to amount of such property.  
1821, 135, § 10.

**SECT. 25.** No minister, deacons, elders, trustees, stewards or presiding officers shall be deemed capable of taking any estate, granted as aforesaid, so long as the clear annual income of prior grants to such officers, or to the church, shall be equal to the sum of three thousand dollars.

Records of parishes open to inspection.  
1821, 135, § 9.

**SECT. 26.** The records of every parish shall be open to the inspection of every member, and to the clerk of every other parish; and each clerk shall furnish attested copies of records, on request, for a reasonable compensation.

Parishes may appoint their treasurer to collect taxes.  
1825, 296, § 1.

**SECT. 27.** When any parish or religious society, at any legal meeting, shall vote, for any legal purpose, any sum of money, and assess the same on the polls and estates of the members thereof, such parish or society may appoint their treasurer, a collector of taxes, with like power as is provided for a treasurer of a town, who has been appointed a collector of said town, according to the provisions contained in the one hundred thirty fourth section of chapter, fourteen.

May authorize abatements for prompt payment.  
1825, 296, § 2.

**SECT. 28.** Such parish or society may, by vote, authorize similar abatements upon taxes to be paid to such collector and treasurer, or his deputy, within such periods, as the parish or society may, in legal meeting, establish; and the treasurer shall give like public notice of the parish votes; and such taxes, as shall not be paid within the periods above mentioned, or others agreed upon, shall be collected by the treasurer, in the same way, as town taxes in such circumstances.

Assessors to give a warrant to such treasurer.  
1825, 296, § 3.

**SECT. 29.** The assessors, who shall regulate the collection of their taxes agreeably to the provisions of this act, shall deposit the same in the hands of the treasurer and collector, for collection, with a warrant for that purpose, after he shall have been duly qualified.

Overseers of monthly quaker meetings, to hold grants, as a corporation.  
1825, 298, § 1.

**SECT. 30.** The overseers of each monthly meeting of the people, called quakers, shall be deemed so far a body corporate, as to take and hold, in succession, all grants and donations of estate, real, personal or mixed, made, or hereafter to be made, to their respective monthly meetings, or to their preparative meetings constituting the same, or to either of them, to said overseers, or to the use of any of said meetings, or to the poor thereof; and to aliene, or manage, the same according to the terms and conditions, on which the same may have been made; and in the name of said overseers, for the time being, to prosecute or sue for any right, that may have vested in said overseers, the poor of said meetings, or in any of said meetings, in consequence of such grant or donation.

To hold grants, made to quarterly quaker meetings.  
1825, 298, § 2.

**SECT. 31.** Such overseers may also take and hold, as a corporation, in succession, all grants and donations of real estate, situate within the territorial limits of their respective monthly meetings, and all grants and donations of personal estate made by any person,

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required for sales of real estate by executors and administrators for payment of debts. The judge shall also appoint three disinterested persons, as commissioners, to ascertain what persons are interested in the said house, and the value of their respective shares, and the amount of debts, due from the owners of said house, as such, to other persons; the report of which commissioners shall be returned to the court for its acceptance; and the net avails of such sale shall be, by the judge, ordered to be applied to the payment of the said debts in the first instance, and the residue to be divided amongst the owners, ascertained as aforesaid. If any owner shall neglect for two years to apply for his proportion, the same shall be ratably distributed among the others.

Owners of meeting houses and of pews therein, may incorporate themselves. 1835, 187, § 1.  
Mode of calling a meeting for that purpose. 1835, 187, § 2.

SECT. 4. The owners of any meeting house, or building erected for public worship, together with the owners of the pews therein, may be created bodies corporate, in the manner, and for the purposes hereinafter provided.

SECT. 5. Whenever a majority of the owners of any such building shall make application, to a justice of the peace of the same county, stating their desire to become a body corporate, he shall issue his warrant to one of the applicants, directing him to notify the owners to meet at the time and place, and for the purposes, named in said warrant, by posting up a certified copy of the same, in two public places in the town, where the building is situate; one of which notices shall be posted on the principal outer door of such building.

Manner of organizing and becoming incorporated. 1835, 187, § 3.

SECT. 6. The owners of the building, when assembled, may choose a moderator and clerk, who shall perform the duties usually incumbent on such officers; and thereupon said owners shall be, and are declared to be, a body corporate, and shall be known by such name, as they shall adopt, and may agree on the mode of calling future meetings.

Corporate rights and powers. 1835, 187, § 4.  
Proviso.

SECT. 7. Such corporation, so created, may by a vote of a majority of its members, use and control any meeting house or building, erected for public worship, of which they may be part or sole owners, in such manner as they please; provided, that nothing, in the three preceding sections, shall be construed to affect the rights of owners of such houses of worship, as have been, or shall be built by different religious denominations.

Minority, of a different denomination, may have a division of time, and how obtained. 1838, 327, § 1.

SECT. 8. When any house of public worship shall be owned by persons of different religious denominations, any one or more of such owners, being of the minority, and owning not less than ten pews, may apply to any justice of the peace and quorum, to obtain a division of the time of occupying the house; and the justice shall call a meeting of the owners of the house, by posting up, in a public place, in or about the house, a notice, thirty days at least before the meeting; which shall state the time, place and object of the meeting.

Mode of proceeding. 1838, 327, § 2.

SECT. 9. At such meeting, the owners, who may not be applicants, may designate another justice of the peace of the county, and the two justices may appoint a third person, who shall be disinterested, and not an inhabitant of the town, in which the house is located, or belonging to the denomination of either of the parties

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Fee in school lands, how vested. 1824, 254, § 1.

Selectmen, town clerk and treasurer, to be trustees. 1824, 254, § 2. 1 Fairf. 441. 3 Fairf. 381.

Trustees shall choose their officers annually. 1824, 254, § 2.

Powers of such trustees. 1824, 254, § 3.

Funds to be placed on interest. 1824, 254, § 3.

Lands or funds reserved for the first settled minister, how vested. 1824, 254, § 3.

Trustees may hold estate for use of the ministry. 1824, 254, § 3.

Also for use of schools. 1824, 254, § 3.

Income of funded property, how applied. 1824, 254, § 4. 1832, 39, § 2.

How expended. Towns still liable to raise school taxes. 1832, 39, § 3.

in the inhabitants of such town, and not in any particular parish therein, for the use and support of the gospel ministry in such town.

**SECT. 2.** Where lands have been granted, or reserved, for the use of schools in any town within this state, the fee in which lands has not already vested, the same shall be and hereby is declared to be vested in the inhabitants of such town, for the support and use of schools therein, forever.

**SECT. 3.** The selectmen, town clerk and treasurer, for the time being, of each town in the state, wherein no other trustees for the same purpose are already lawfully appointed, shall be a body corporate, and trustees of the ministerial and school funds in such town forever, with the usual powers granted to similar corporations.

**SECT. 4.** The trustees shall elect, annually, a president, clerk and treasurer; and the treasurer shall give bond, with sufficient sureties in the opinion of the trustees, for the faithful discharge of his duty; and the clerk shall be duly sworn.

**SECT. 5.** Such trustees shall have power to sell and convey all the ministerial and school lands, belonging to their respective towns, and lying within the same, except such parts as may have already vested, as mentioned in the first section; and any deed of such land, so sold, duly executed by the treasurer, by order of the trustees, shall pass the estate.

**SECT. 6.** The trustees, as soon as may be, shall place the proceeds of the sale at interest, secured by mortgage of real estate of twice the amount of the principal sum, or by bond, or note, with sufficient sureties, or invest the same in bank stock, or public securities.

**SECT. 7.** When any such town shall settle a minister, all lands granted or reserved for the first settled minister, or the proceeds of the sale thereof, as aforesaid, shall pass to, or be paid over to, such first settled minister of such town, under the terms and conditions of the original grant, except as provided in the tenth section.

**SECT. 8.** Such trustees may take and hold any real, or personal, estate, by gift, grant, or otherwise, for the use of the ministry in their respective towns; the annual income of which shall not exceed one thousand dollars.

**SECT. 9.** Such trustees may so take and hold any such property, for the use of schools in their several towns, the annual income of which shall not exceed the sums, which their respective towns are by law bound to raise for the use of schools therein.

**SECT. 10.** The annual income of any fund, which has arisen or may arise from the proceeds of the sale of lands, granted or reserved as aforesaid, whether for the use of the ministry, or of the first settled minister, or for the use of schools in any town in this state, and which fund, or the land, from which it may arise, has not become vested in some particular parish or individual, and also the income arising from rents and profits of any real or personal estate, taken and held as aforesaid, from leases of the same, shall be annually applied to the support of the primary schools in such town.

**SECT. 11.** Such income shall be expended in the same manner, as other moneys raised for the support of schools, are, by law, required to be expended; but nothing in this chapter shall be con-



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- SECT. 19.** Penalty for violation of this provision.
20. Selectmen may establish quarantine regulations.
21. Penalty for breach thereof.
22. Duty of pilots to give notice thereof.
23. Punishment for violation or evasion of quarantine, after notice.
24. Selectmen to furnish signals.
25. Restriction of persons visiting vessels at quarantine.
26. Health committee may exercise authority of selectmen, in relation to quarantine.
27. Quarantine expenses, how paid.
28. Hospitals may be established.
29. Restriction, as to location thereof.
30. Restrictions on inoculation with the small pox.

- SECT. 31.** Physicians and others liable to hospital regulations.
32. Hospital to be provided, on the breaking out of infectious diseases. Regulations.
33. Precautions to prevent the spread of such diseases.
34. Penalty for violation of hospital regulations, by persons subject thereto.
35. Householders and physicians to give notice of infectious diseases under their care.
36. Forfeitures, how recovered and appropriated.
37. Towns may choose a board of health; their powers and duties.
38. Plantations to have the same powers, as towns.
39. Vaccination may be at the expense of towns and plantations.

Precautions against infected persons. 1821, 127, § 1.

**SECTION 1.** When any person coming from abroad, or residing in any town, shall be infected, or shall have been recently infected, with any disease or sickness, dangerous to the public health, the selectmen of the town, where such person may be, shall make provision, in the manner they shall judge best, for the safety of the inhabitants, by removing such person to a separate house, if it can be done without great danger to his health, and by providing nurses and other assistance and necessaries; which shall be at the charge of the person himself, his parent or master, if able, otherwise at the charge of the town, to which he belongs.

Precautions against persons, arriving from infected places. 1821, 127, § 2.

**SECT. 2.** When any infectious or malignant distemper is known to exist in any place, out of the state, the selectmen of any town, in the state, may, if they see cause, and by giving public notice in such town, in such mode as they may find convenient, require all persons coming from such place out of the state, to inform one of the selectmen, or the clerk of such town, of their arrival, and from what place; and any such person, having actual notice of such requirement, who shall not, within two hours after his arrival and actual notice, as aforesaid, give such information, shall forfeit one hundred dollars, to the use of the town.

Restrictions on such persons; they may be removed, if refractory. 1821, 127, § 2.

**SECT. 3.** Any person, who is required to give notice to one of the selectmen, or the clerk of any town, as provided in the preceding section, may be prohibited by said selectmen, from going to any part of such town, where they may judge it unsafe for the inhabitants, for him to go. If he shall not choose to comply with such prohibition, it shall be his duty, unless disabled by sickness, forthwith to depart from the state, in such manner and by such road, as the said selectmen shall direct; and in case of neglect or refusal, any justice of the peace in the county, on complaint of either of such selectmen, may, by his warrant to a proper officer, or other person named in said warrant, cause such person to be removed out of the state.

Penalty, if they return. 1821, 127, § 2.

**SECT. 4.** Any person removed by warrant, as aforesaid, who during the prevalence of such distemper in the place, where he

**CHAP. 21** of transporting and purifying the same, shall be paid by the owners thereof, at such rates and prices, as shall be determined by the selectmen.  
1821, 127, § 5.

Compensation for men, or property, impressed.

**SECT. 11.** Whenever the sheriff, or other officer, shall impress or take up any houses, stores, lodging, or other necessaries, or shall impress any man, as is provided in this chapter, the several parties interested shall be entitled to a just compensation therefor, to be paid by the town in which such persons, or property, shall have been so impressed.

Adjournment of courts, on account of danger from infection.  
1821, 127, § 7.

**SECT. 12.** Whenever any malignant infectious distemper shall prevail in any of the towns, wherein the supreme judicial court, district court, or court of county commissioners are to be holden, at the time prescribed by law, or by their own adjournment, the justices of the said courts, respectively, are hereby empowered to adjourn and hold said courts in any town in said county, by proclamation to be made in such public manner as they shall judge best, as near to their usual place of meeting as, in their opinion, safety will permit.

Removal of infected prisoners from place of confinement.

**SECT. 13.** Whenever any person, confined in any common jail, house of correction, or work house, shall be attacked with any disease, which the selectmen of the town, where such person may be, by medical advice, shall consider dangerous to the safety and health of the other prisoners, or of the inhabitants of the town, the said selectmen shall, by their order in writing, direct the removal of such person to some place of safety, there to be securely kept and provided for, until their further order; and if such person shall recover from such disease, he shall be returned to the said prison, or other place of confinement.

Order for removal, how returned. Such removal, not an escape.

**SECT. 14.** If the person, so removed, shall have been committed by order of any court, or under any judicial process, the order for his removal, or a copy thereof, attested by the selectmen, shall be returned by them, with the doings thereon, into the office of the clerk of the court, from which the process was issued for committing such prisoner; and no prisoner removed, as aforesaid, shall be considered, as thereby having committed an escape.

Health committee, how chosen; their duties.  
1821, 127, § 8.

**SECT. 15.** Any town in this state may, at its annual meeting, legally warned for that purpose, choose a health committee, to consist of not less than three, nor more than nine persons, or they may choose one person to be a health officer. And it shall be the duty of such health committee or health officer, at the expense of their town, to remove all filth of any kind whatever, which shall be found in any street, lane, wharf, dock, or other place within the limits of their town, which, in their judgment, may endanger the lives or health of any of the inhabitants thereof; and also to require the owner or occupant to remove or discontinue any drain or other source of filth, the removal of which they may deem necessary.

May order removal of private nuisances; proceedings thereon.  
1821, 127, § 9.

**SECT. 16.** Whenever any source of filth, or other cause of sickness, shall be found on private property, the owner or occupant thereof shall, within twenty four hours after notice from the said committee, or health officer, at his own expense, proceed to remove or discontinue the same; and if such owner or occupant shall neglect, after such notice so to do, or shall unreasonably delay to

**CHAP. 21.** who shall, contrary thereto, pilot any vessel up to said seaport town, shall forfeit a sum, not exceeding one hundred dollars.

Punishment for violation or evasion of quarantine, after notice. 1821, 127, § 11.

**SECT. 23.** When any master or commander of any vessel shall come up to any seaport town aforesaid, with his said vessel, after notice given to him by any person whatever, that a quarantine has been directed by the said selectmen, for all vessels coming from the port or place, from which said vessel sailed; or shall, by false declarations or otherwise, fraudulently attempt to elude the directions of the said selectmen; or shall land, or suffer to be landed from his vessel, any person, or apparel, bedding, goods or merchandise, without permission of the said selectmen, he shall incur the like penalty, or suffer the like imprisonment, or both, as is provided in the twenty first section of this chapter, on like prosecution.

Selectmen to furnish signals. 1821, 127, § 13.

**SECT. 24.** The selectmen of every seaport town, requiring vessels to perform quarantine, shall provide, at the expense of such town, a suitable number of red flags, of at least three yards in length; and the master of every vessel, ordered to perform quarantine, as aforesaid, shall cause one of said flags to be continually kept, during the term of his quarantine, at the head of the mainmast of his vessel; and no person shall go on board such vessel, during said term, unless by permission of said selectmen.

Restrictions of persons visiting vessels at quarantine. 1821, 127, § 13.

**SECT. 25.** Any person, who shall go on board such vessel, contrary to the provisions of the preceding section, shall be thereafter considered and held liable to the same regulations and restrictions, as those belonging to the said vessel; and shall there be detained by force, if necessary, until duly discharged by the said selectmen.

Health committee may exercise authority of selectmen, in relation to quarantine. 1821, 127, § 14.

**SECT. 26.** In every seaport town aforesaid, where a health committee, or health officer, may have been legally chosen, as provided in section fifteen of this chapter, such health officer may perform all the duties, and exercise all the authority, which the selectmen of such town may perform and exercise, in requiring vessels to perform quarantine, under the provisions of this chapter.

Quarantine expenses, how paid. 1821, 127, § 15.

**SECT. 27.** All expenses, incurred on account of any person, vessel, or goods, under any quarantine regulations, shall be paid by such person, or the owner of such vessel or goods, respectively.

Hospitals may be established. 1821, 127, § 16.

**SECT. 28.** The inhabitants of any town may establish, within the same town, one or more hospitals, for the reception of persons, having the small pox or other disease, which may be dangerous to the public health; or the selectmen of any town may license any building in said town, as a hospital, at their discretion; and such hospital, or licensed building, shall be under the control of the selectmen.

Restrictions, as to location thereof. 1821, 127, § 16.

**SECT. 29.** No such hospital shall be established, or licensed, within one hundred rods of any inhabited dwelling house, situated in any adjoining town, without the consent of the selectmen of such adjoining town.

Restrictions on inoculation with small pox. 1821, 127, § 16.

**SECT. 30.** If any person shall inoculate himself, or any other person, or suffer himself to be inoculated, with the small pox, unless at some hospital licensed or authorized by law, he shall, for each offence, forfeit a sum not exceeding one hundred dollars.

Physicians and others liable to

**SECT. 31.** Whenever any hospital shall be so established or licensed, the physician, the persons inoculated or sick therein, the

nurses, attendants, and all persons who shall approach or come within the limits of the same, and all such furniture, or other articles, as shall be used or brought there, shall be subject to such regulations, as may be made by the selectmen.

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hospital regulations. 1821, 127, § 17.

SECT. 32. Whenever the small pox, or any other disease, dangerous to the public health, shall break out in any town, the selectmen thereof shall immediately provide such hospital or place of reception, for the sick and infected, as they shall judge best for the accommodation and safety of the inhabitants; and such hospitals and places of reception shall be subject to the regulations of established hospitals; and the selectmen shall cause such sick and infected persons, to be removed to such hospitals or places of reception, unless the condition of the sick person be such, as not to admit of removal without imminent danger; in which case the house or place, where the sick shall remain, shall be considered as an hospital for every purpose before mentioned; and all persons residing in, or in any way concerned with the same, shall be subject to the regulations of the selectmen, as before provided.

Hospital to be provided, on the breaking out of infectious diseases. Regulations. 1821, 127, § 18.

SECT. 33. Whenever any disease, dangerous to the public health, is found to exist in any town, the selectmen shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travelers, by displaying red flags at proper distances, and by all other means, which, in their judgment, shall be most effectual for the common safety.

Precautions to prevent the spread of such diseases. 1821, 127, § 19.

SECT. 34. If any physician or other person, in any of the hospitals or places of reception, before mentioned, or who shall attend, approach or be concerned with the same, shall violate any of the regulations, lawfully made, in relation thereto, either with respect to himself, or his, or any other person's property, the person so offending, shall, for each offence, forfeit a sum, not less than ten dollars, nor more than one hundred dollars.

Penalty for violation of hospital regulations, by persons subject thereto. 1821, 127, § 19.

SECT. 35. Whenever any householder, or any physician, shall know, that any person under his care is taken sick of any disease, dangerous to the public health, he shall immediately give notice thereof to the selectmen of the town, in which the diseased person may be; and if he shall neglect to give such notice, he shall forfeit a sum not less than ten, nor more than thirty dollars.

Householders and physicians to give notice of infectious diseases under their care. 1821, 127, § 20.

SECT. 36. All forfeitures, mentioned in the preceding sections of this chapter, except when otherwise expressly provided, shall enure to the use of the town, where the offence shall have been committed.

Forfeitures, how recovered and appropriated. 1821, 127, § 16, 19, 20.

SECT. 37. Every town, respecting which no provision is made, by any special law, for choosing a board of health, may at its annual meeting, or at any other meeting, legally warned for the purpose, at its election, choose a board of health to consist of not less than three, nor more than nine persons, and such board of health shall have all the powers, discharge all the duties, and be subject to the same penalties or restrictions, as in this chapter are provided, in relation to the selectmen, health committee, or health officer of any town, not electing to choose a board of health as aforesaid; and the same penalties shall attach to such persons, as disobey their authority.

Towns may choose a board of health; their powers and duties.

**CHAP. 22.**  
Plantations to have the same powers, as towns.

Vaccination may be at the expense of towns and plantations.  
1821, 126, § 2.

**SECT. 38.** The provisions of this chapter in relation to towns, are also extended to organized plantations, and the assessors of such plantation[s], within the same, shall do the duties, and have the same powers, as the selectmen of the towns, and be subject to the same restrictions and penalties; and the same penalties shall attach to persons, who may disobey their authority.

**SECT. 39.** Every town and organized plantation may, at their annual meeting, or at any meeting, duly warned for the purpose, provide for the inoculation of the inhabitants of such town or plantation, with the cow pox, under the direction and control of the health committee, health officer, or board of health; and [to] raise all necessary sums to defray the expense of such inoculation, or such part thereof, as they may think proper.

**CHAPTER 22.**

**OF THE PRACTICE OF PHYSIC AND SURGERY.**

**SECT. 1.** Certificate of good moral character from selectmen necessary, for recovery of compensation.

**SECT. 2.** Exceptions to the foregoing restriction.

Certificate of good moral character from selectmen necessary, to recovery of compensation.  
1838, 353, § 2.  
6 Mass. 134.  
1 Pick. 33.  
16 Pick. 353.  
1 Metc. 154.

**SECTION 1.** No person, excepting as provided in the following section, shall be entitled to recover at law any compensation for medical or surgical services, by him alleged to have been performed, unless previously to such services, he have obtained from the selectmen of the town where he resided, or shall reside at the time of the performance of such services, a certificate, that it has been satisfactorily proved to them, that such person is of good moral character.

Exceptions to the foregoing restriction.  
1831, 489, § 1.  
1838, 353, § 2.

**SECT. 2.** The restriction in the foregoing section shall not apply to any physician or surgeon, who had commenced practice previously to the sixteenth day of February, in the year eighteen hundred and thirty one; nor to any physician or surgeon, who has received, or may hereafter receive a medical degree at some public institution, within the United States, where such degrees are usually conferred, or may have been licensed by the censors of the Maine Medical Society.

**CHAPTER 23.**

**OF BURYING GROUNDS.**

- SECT. 1.** Towns may purchase land for burying grounds.
2. Proceedings to incorporate proprietors of burying grounds.
  3. Mode of organization, as a corporation.
  4. Grounds to be fenced, within one year.

- SECT. 5.** Towns and parishes to fence ancient burying grounds.
6. Penalty, if selectmen or other officers neglect their duty.
  7. Grounds to be fenced, and unalienable and indivisible, except by unanimous consent. Description to be recorded.

## CHAPTER 24.

## OF DRAINS AND COMMON SEWERS.

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| <p>SECT. 1. Penalty for laying drains in highways, without consent of selectmen.</p> <p>2. How made and repaired.</p> <p>3. All, who join in a drain, must share the expense.</p> <p>4. How the expense shall be apportioned.</p> | <p>SECT. 5. Payment may be enforced, after notice.</p> <p>6. Mode of proceeding, and liability for opening and repairing.</p> <p>7. This chapter not to affect private contracts.</p> |
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Penalty for laying drains in highways, without consent of selectmen.  
1821, 121, § 1.

SECTION 1. If any person shall dig up the ground, in any highway or street in any town, for the laying or repairing any drain or common sewer, without the consent of the selectmen in writing, he shall forfeit and pay, for each offence, four dollars to the use of the town.

How made and repaired.  
1821, 121, § 2.

SECT. 2. All drains and common sewers, hereafter made or repaired, in any highway or street, shall be done, substantially, with brick or stone, or such other materials, as the selectmen shall permit, and in the manner they direct.

All who join in a drain, must share the expense.  
1821, 121, § 2.

SECT. 3. When any person, by consent and direction as aforesaid, shall, at his own expense, lay any common drain or sewer, for the benefit of himself and others who may see fit to join therein, every person, who shall enter his particular drain into it, or, by any other means, receive any benefit from it, shall pay the owner thereof a proportion of the expense of making it, to be ascertained and determined by the selectmen, and by them certified; saving a right of appeal to the county commissioners.

How the expense shall be apportioned.  
1821, 121, § 3.

SECT. 4. The expense in opening a drain, and removing obstructions, shall be paid by all who are benefited thereby; and the same shall be apportioned and determined by the selectmen; saving an appeal as aforesaid.

Payment may be enforced, after notice.  
1821, 121, § 3.

SECT. 5. Such selectmen shall notify each person of the amount, he shall be held to pay, and to whom; and if such sum shall not be paid by him in ten days, he shall be held to pay double the sum certified to him, with costs.

Mode of proceeding, and liability for opening and repairing.  
1821, 121, § 3.

SECT. 6. The person having occasion to open any drain, shall notify all persons interested therein, seven days before he shall begin, by advertising in the manner the selectmen shall direct; and if the objections to proceeding, if any are made, shall be judged reasonable by the selectmen, then the objector shall not be held to pay any part of the expense; but if no objections be made within three days, or, when made, are not judged sufficient, they shall give a written permission to proceed and open the drain, and clean and repair it.

This chapter not to affect private contracts.  
1821, 121, § 3.

SECT. 7. Nothing in this chapter shall affect any covenants or agreements already made, or that hereafter may be made, among the owners of such drains and common sewers, as to opening, cleaning and repairing the same.

**CHAP. 25.** SECT. 55. Agent to expend the money in repairs.

56. Proprietors of tracts may meet and assess themselves, for these purposes.

**ARTICLE IV. LIABILITY OF TOWNS AND OTHERS TO REPAIR WAYS, AND PROCEEDINGS IN RELATION THERETO.**

57. Ways to be kept in repair. Penalty for neglect.

58. Ways on the line between towns, how repaired.

59. If the towns disagree, county commissioners may make division.

60, 61. Such division may be made, when the highway is located.

62. Surveyors of highways to be chosen.

63. Assignment of surveyors' limits.

64. Right of selectmen, when chosen surveyors.

65. Highway taxes, how raised, assessed and apportioned.

66. Two thirds to be expended before first of July.

67. Surveyor to give notice for furnishing labor and materials.

68. Ways, blocked with snow, to be opened. Sudden injuries to be repaired.

69. Towns to furnish apparatus, for breaking out snow.

70. Surveyors to return a list of delinquents, who may be afterwards assessed.

71. Surveyors to remove obstructions.

72. May dig for materials in lands, not enclosed.

73. Watercourses, not to incommode individuals.

74. Proceedings, if amount raised be insufficient to repair roads.

75. Towns may raise cash taxes, to repair ways; how assessed.

76. Abatements, on account of wide rimmed wheels.

77. Repair of ways, by contract.

78. Surveyors may be empowered, to distrain for non payment of road taxes.

79. Surplus, to be paid to town treasurers.

80. Penalty, if surveyor neglect to pay over such surplus.

81. Surveyors to account with selectmen. Penalty for neglect.

82. Towns may elect road commissioners.

83. Their powers, liabilities and compensation.

84. Their mode of proceeding.

SECT. 85. Manner of notifying non residents.

86. Proceedings, in collecting delinquent road taxes.

87. Commissioners may be authorized to make a discount to those who pay money.

88. Chairman of road commissioners, and his duties.

89. Damages through defect of roads. Penalty, if life is lost through such defect.

90. Surveyor liable for fines, accruing through his neglect.

91. Only one indictment against a town, at the same term of a court. Costs.

92. Courts to appoint agents, to expend fines in repairing roads.

93. Penalty for such agent's neglect.

94. Assessment and collection of fines.

95. Clerk may issue a warrant, to enforce collection.

96. If assessment be not made, nor road repaired, warrant of distress to issue.

97. Any person may remove fences not authorized, across a way. Remedy.

98. Surveyor to remove obstructions. Remedy for expenses.

99. When buildings or fences are adjudged nuisances on roads, mode of obtaining pay for removal.

100. When buildings or fences are to be deemed boundaries of roads.

101. Towns estopped to deny location of roads, in certain cases.

102. Guide posts.

103. Selectmen to direct where they shall be located. Penalty for their neglect.

104. Form and inscriptions; substitutes.

105. Fines for neglect of towns.

106. Plantations subject to like obligations.

**ARTICLE V. OF MAKING AND REPAIRING PRIVATE WAYS.**

107. Proprietors of private ways may call meetings.

108. Proceedings and powers, when assembled.

109. Penalties on delinquent proprietors.

110. Penalty, if surveyor refuse to accept.

111. Proprietors may make repairs by contract, and raise money.

112. Surveyor may distrain for such taxes.

SECT. 113. Penalty for his neglect.

114. Recovery and appropriation of forfeitures.

ARTICLE VI. OF THE LIABILITY OF OCCUPANTS OF STATE LANDS, FOR REPAIR OF ROADS.

SECT. 115. Occupant of state lands to be taxed, in proportion to his interest.

116. Manner of enforcing payment.

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## ARTICLE I. LOCATION, ALTERATION, OR DISCONTINUANCE OF HIGHWAYS.

SECTION 1. Applications for location, alteration or discontinuance of highways, leading from town to town, shall be made by petition, in writing, to the county commissioners, at one of their regular sessions, within and for the county, in which such new highway or alteration or discontinuance, shall be wanting.

Petitions to be presented to the county commissioners. 1821, 118, § 1. 1832, 42, § 1. 7 Mass. 158.

SECT. 2. Said commissioners, when satisfied that the petitioners are responsible, and that inquiry into the merits of their application is expedient, shall view the premises, first giving, to the parties interested, thirty days notice of the time and place of their meeting, by causing copies of such petition, with their order thereon, to be posted up in three public places in each town, in which any part of such highway may lie, and to be served upon the clerks of such towns, and to be published in some newspaper, if any there be, in the same county; which notice shall be considered sufficient for individuals, as well as the public.

Commissioners to view the route, after notice has been given. 1832, 42, § 1. 1 Mass. 86. 8 Pick. 343. 13 Pick. 102. 17 Pick. 154.

SECT. 3. If, after such view, and hearing of the parties and their testimony, which hearing shall be at the time and place of such view, or at some convenient place in the vicinity, after such view, they shall judge the same to be of common convenience and necessity, the said commissioners shall have power to lay out, alter or discontinue such highway, or any part thereof, and shall estimate the damages, if any, which any person may sustain by reason thereof; and shall make a correct return of their doings, under their hands, with an accurate plan or description of said highway, so laid out, altered or discontinued, to the regular session of said county commissioners' court, to be held next after such proceedings shall have been had and finished; and shall cause the same to be duly recorded.

Hearing the parties, and proceedings, in case of location. 1832, 42, § 1. 2 Mass. 171. 6 Mass. 492. 2 Greenl. 50. 3 Fairf. 210. 2 Pick. 517. 21 Pick. 258.

SECT. 4. In all locations or alterations of highways, made by the county commissioners, they shall cause durable monuments to be erected at the angles thereof.

Monuments to be erected at angles. 1833, 79, § 4.

SECT. 5. Whenever the county commissioners shall make and record their return, as provided in section, three, of this chapter, they shall also cause to be entered of record, that the original petition, upon which their proceedings are founded, is continued, until their second next regular session, to be held thereafter; and all persons, aggrieved by their decision, in estimating damages, shall present their petitions for redress, at the first or said second next regular session; and, if no such petition be then presented, the proceedings upon the original petition shall be closed, and so entered of record; and all claims for damages, not before allowed, shall be forever barred.

Petitions to be continued two terms, after the return has been recorded. 1835, 168, § 1.

SECT. 6. If any such petition be presented, as aforesaid, for increase of damages, the county commissioners shall still further

Further continuance, in case of com-



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plaints for damages. 1835, 168, § 1.

County to pay the damages : to whom payable. 1823, 227, § 1. 6 Mass. 216.

Parties entitled to a jury or committee, who may decide questions of title to land. 1821, 118, § 1, 2, 6. 3 Fairf. 210. 7 Pick. 13. 10 Pick. 235. 21 Pick. 258.

Petitioners may join. Several applications may be submitted to the same jury or committee. 1821, 118, § 5, 7.

Petition not to abate, by death of any petitioner.

In joint petitions, survivor may proceed, after notice to the administrator.

Warrant for a jury, to whom directed. 1821, 118, § 1.

Jurors, how

continue the original petition, from term to term, until a final decision shall be had, on such petition for increase of damages, as hereinafter provided; after which, the record of the proceedings, on said original petition, shall be completed, and not before.

SECT. 7. All damages, awarded to any persons, on account of the laying out, altering or discontinuing of any highway, under the provisions of this chapter, shall be paid out of the treasury of the county, in which such highway shall be located; and the commissioners shall order the same to be paid accordingly. Tenants for life or years, and persons, owning a remainder or reversion, shall be entitled to have their damages allowed to them severally, in proportion to their respective interests in the property affected.

SECT. 8. Any party, aggrieved by the doings of the commissioners in estimating damages, as aforesaid, may have a jury to determine the matter of his complaint, on his petition presented pursuant to the fifth section of this chapter, unless he shall agree with the parties, adversely interested, to have the same determined by a committee, to be appointed under the direction of the commissioners. In case of controversy respecting the interests of any party, claiming damages as aforesaid, the said jury or committee shall have power to consider and determine such question of interest, so far only, as respects the damages of such complainant. Any town, or other corporation, aggrieved by the estimate of the commissioners, shall be entitled to a similar remedy, by a jury or committee, as is provided for individuals, claiming damages.

SECT. 9. If two or more persons shall apply, at the same time, for joint or several damages, they may join in the same petition to the commissioners; and if several applications shall be pending, at the same time, before the commissioners, for a jury or committee, relative to the same highway, the said commissioners may, at their discretion, cause all such applications, to be considered and determined, by the same jury or committee; and the costs shall be taxed, either jointly or severally, as the commissioners shall determine to be equitable. The commissioners shall also have like power, in case of adverse petitions relative to the same highway.

SECT. 10. No such petition shall abate, by reason of the death of any petitioner; but the executors or administrators, or the heirs or devisees, if they shall be the persons interested, may appear and prosecute such petition, or present a new one, in the same manner, and with the same effect, as the original party might have done, if living.

SECT. 11. If, upon the death of one or more of several petitioners for a jury, the executors, administrators, heirs or devisees of such petitioners, after notice from the commissioners, that such petition is pending, shall neglect to appear, or to prosecute, the surviving petitioners may proceed without them.

SECT. 12. The warrant for a jury shall be directed to the sheriff of the county or his deputy, if disinterested, or to a coroner, as the commissioners shall order, requiring him to summon a jury of twelve men, to hear and determine the matter of the complaint, set forth in the petition for such jury, and to decide all such matters, as shall legally come before them at such hearing.

SECT. 13. The officer, thus authorized, shall make application

to the selectmen of two or more towns, in said county, other, than the town where the property, affected, is situated, who shall draw out of the jury box, of their respective towns, so many jurors, as such officer shall require, not exceeding nine from any one town. The jurors shall be drawn, summoned and returned, as in other cases; excepting that the jurors need not be summoned, more than twenty four hours before the time appointed for their attendance.

SECT. 14. If by accident, or challenge, there shall happen not to be a full jury, the officer who summoned the jury, or in his absence, the officer attending the jury, shall return some suitable person, to supply the deficiency.

SECT. 15. In all cases of petitions for increase of damages, as aforesaid, on account of any highway, when the damages are liable to be assessed on the county, the attorney for the state, in the county where such highway is situated, shall be duly notified of such application, and shall be authorized to act in behalf of the county, as well in agreeing on a committee, as before provided, as in relation to a jury. It shall be required of the officer, in his warrant for summoning a jury, or of the committee acting by agreement, to give reasonable notice to said attorney, and it shall be the duty of such attorney, to attend said jury, or committee, in behalf of his county. The warrant shall also specify the other parties interested, whom said officer shall be required to notify, as aforesaid.

SECT. 16. The commissioners, if they see cause, may appoint some person, specially qualified for the purpose, to preside at the view and hearing before the jury; who shall be under oath, and shall be allowed a reasonable compensation from the county, to be fixed and allowed by the commissioners. The jury shall also be attended by some officer, qualified as aforesaid, to summon jurors for the purpose, and who shall preside at the view and hearing, if no other person is specially appointed; who shall be sworn for the occasion.

SECT. 17. The person, who shall preside at the trial, shall keep order therein, and shall administer an oath to the jurors, for the faithful discharge of their duty, and to all the witnesses examined, in the usual form.

SECT. 18. The jury shall view the premises, and also hear and examine all such legal evidence, as may be laid before them, with the observations of the parties, or their counsel, thereon. All the jurors shall sign the verdict, which may be agreed upon, and the same shall be enclosed in a sealed wrapper, with an endorsement, expressing what it contains; and shall be delivered so endorsed to the officer, having charge of the jury. The verdict shall be returned at the session of the commissioners, next following the order for summoning the jury. The officer shall make return of his doings with the verdict, and specify his own travel and attendance, and that of each juror. If the jury do not agree on a verdict, the commissioners may issue a new warrant, at their next session, on motion of the original petitioner.

SECT. 19. The verdict of the jury, or the report of the committee, duly returned to the said commissioners, and by them accepted and recorded, shall be conclusive on the parties; and the

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drawn and summoned.  
1821, 118, § 1.

Talesmen, in case of deficiency.  
1821, 118, § 1.

County attorney and other parties, to be notified.  
1821, 249, § 2.

Who shall preside at the view and hearing,  
11 Pick. 269.

Jurors and witnesses to be sworn.

Proceedings of jury, verdict, and officer's return.  
1821, 118, § 1.

Effect of verdict, when accepted. Costs.  
1821, 118, § 1, 4.

WAYS.

**§ 25.** proceedings on the original petition shall be considered completed. The party prevailing, whether the claimant for damages, or the county, town or other corporation interested, shall recover their costs, incurred on the occasion, against the other.

168, § 1.  
ss. 435.  
rf. 210.

ie for taking  
wood, pay-  
nt of dama-  
s, and open-  
t road.  
35, 168, § 1.  
Mass. 406.  
Greenl. 137.

**SECT. 20.** There shall be allowed to owners of lands, over which such road was laid out, twelve months from the session of the commissioners, when the proceedings on said original petition are closed, to take off their wood, timber or trees; also to the county or town, liable for damages, which may then appear of record to be due, by reason of the laying out, altering or discontinuing such road, a term of time, not exceeding two years, to pay the same; and to the county, town or plantation, through which any such road is laid out, a time, not exceeding three years, within which to open and make the same.

Commissioners  
may reject a  
verdict or re-  
port, and dis-  
continue the  
highway: costs  
in that case.  
1835, 168, § 1.

**SECT. 21.** If, on inspection of any report or verdict, duly returned, relating to any highway, intended to be laid out, altered or discontinued, the county commissioners shall be of opinion, that the same ought not to be done, subject to such high damages, as are awarded, it shall be their duty, instead of accepting such report, or verdict, in full, to enter upon the record of proceedings under the original petition, a judgment, that the prayer of the said original petition for such road, to be laid out, altered or discontinued, shall not be granted, for the reason aforesaid; and no damage shall be allowed, but the county or town, liable therefor, shall pay the costs awarded, in the same manner, as if the report, or verdict, had been accepted in regard to damages.

Modification of  
damages, in  
such case.  
1832, 42, § 3.

**SECT. 22.** Whenever any highway shall be discontinued, before the time limited for the payment of damages, awarded to the owners of the land, over which such highway passes, the county commissioners may revoke their order for the payment of damages, and estimate, and order payment of, the damages, actually sustained; provided, that the parties interested shall have a right to have their damages, thus proposed to be varied, to be estimated anew, by a jury or committee, as herein provided in other cases of damages claimed.

Proceedings on  
petitions for  
roads, extend-  
ing into two or  
more counties.  
1832, 42, § 1.  
9 Pick. 46.

**SECT. 23.** Petitions for laying out, altering or discontinuing any highway, extending into or through two or more counties, may be presented, as aforesaid, at any regular session of the commissioners, for either of said counties. Said commissioners, in their discretion, may request a meeting of the commissioners of the other counties, affected, at such time and place, as they shall appoint, to view the route proposed by such petition, by causing an attested copy of such petition to be served upon the chairman of said commissioners, in each of the counties aforesaid, together with a copy of the order of the court, appointing the time and place of said meeting; and they shall notify all persons and corporations, interested, by causing copies of such petition and order to be published in the newspaper, issued by the printer to the state, and also in one other paper, printed in each county, through or in which the proposed road may be located, altered or discontinued, if any such paper there be, and also to be posted up in three public places, in each town, directly interested, and served upon the clerk of said town.

**SECT. 24.** All notices required to be served, posted up or otherwise published, in the preceding section, shall be given, at least thirty days, before the time appointed for the meeting aforesaid.

**SECT. 25.** At such meeting, a majority of the commissioners present may proceed to adjudicate on such petition; provided, that each county be represented by a majority of its own commissioners at the meeting, otherwise they shall only have power to adjourn the meeting.

**SECT. 26.** If a majority of all the commissioners, a quorum being formed as aforesaid, shall adjudge it to be of public convenience and necessity to lay out, alter or discontinue such highway, or any part thereof, as prayed for, the commissioners shall proceed to lay out, alter or discontinue that part of such highway, which lies in their respective counties, in the same way and manner, as is provided, in this chapter, for other highways under their jurisdiction.

**ARTICLE II. OF LOCATION, ALTERATION AND DISCONTINUANCE OF TOWN AND PRIVATE WAYS.**

**SECT. 27.** The selectmen of the several towns, either personally, or by such person or persons, as they may appoint, may lay out, alter or widen, town ways for the use of their respective towns, and private ways, for the use of one or more of the inhabitants thereof.

**SECT. 28.** No such town or private way shall be laid out or altered, unless seven days at least previous thereto, a written notice of the intention of the selectmen of the town to lay out or alter the same, and stating the termini of such road, shall be posted up in two or more public places in the town, and in the vicinity of the proposed route.

**SECT. 29.** No such town or private way shall be established, as laid out or altered, until such laying out or alteration, with the boundaries and admeasurements of the same, shall have been reported to the town, and accepted and allowed, at some meeting of the inhabitants, regularly warned and notified therefor; nor unless such laying out or alteration, with the boundaries and admeasurements aforesaid, shall have been filed with the town clerk, seven days at least before such meeting.

**SECT. 30.** Any town, at a meeting regularly called for the purpose, may discontinue any town or private way.

**SECT. 31.** If any damage shall be sustained by any persons, in their property, by the laying out, altering or discontinuing of a town way, or private way, they shall receive such compensation, as the selectmen shall determine; which shall be paid by the town, if it is a town way; which fact the selectmen shall determine; but if it be a private way, by the persons for whose benefit it is laid out, altered or discontinued. In case any person shall be aggrieved by the determination of the selectmen, he may, upon application to the county commissioners, have his rights ascertained by a jury, or if he can agree with the agent for the town, or party liable to pay, by a committee, to be appointed by said commissioners, in like manner, as is provided in this chapter, in respect to the recovery of damages for laying out highways.

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Notices, how given.

1832, 42, § 2.

Majority of each board, a quorum.

1832, 42, § 2.

If highway be adjudged necessary, each board shall locate in their own county.

1832, 42, § 2.

1836, 198, § 2.

Selectmen may lay out town or private ways.

1821, 118, § 9.

3 Fairf. 32.

Notice to be given seven days.

1 Mass. 86.

3 Greenl. 438.

Proceedings to be confirmed by the town.

1821, 118, § 9.

6 Mass. 7.

5 Pick. 492.

1 Fairf. 335.

2 Fairf. 109.

13 Maine, 250.

16 Maine, 301.

Towns may discontinue such ways.

1821, 118, § 9.

Damages, how estimated and paid.

1821, 118, § 9.

2 Fairf. 422.

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Commissioners may lay out town ways, if selectmen refuse.  
1821, 118, § 10.  
1833, 79, § 3.  
8 Greenl. 271.  
1 Fairf. 24.  
3 Fairf. 210, 271.

SECT. 32. If the selectmen of any town, shall unreasonably refuse or neglect to lay out or alter any such town way or private way, when requested, in writing, by one or more of the inhabitants thereof, or proprietors of land therein, if leading from land under his possession and improvement, to any highway or town way, the commissioners, at any meeting within one year, on application of any of the persons, so requesting, by petition in writing, may cause the said town or private way to be laid out or altered; and they shall ascertain the place and course of the way, and estimate the damages, sustained by any person by reason thereof, and the same, with the costs of the proceeding, shall be paid by the parties, who would have been liable for damages, if no appeal had been made from the selectmen's decision; and the commissioners may issue a warrant of distress therefor, saving to the parties the like remedy by a committee or jury, if they are dissatisfied with the determination of the commissioners.

May discontinue town ways, if towns refuse.  
1821, 118, § 10.



May approve ways laid out by selectmen, if towns refuse.  
1821, 118, § 11.  
2 Mass. 118.  
1 Fairf. 24.  
3 Fairf. 210, 271.

SECT. 33. The commissioners may also, upon the application in writing of any inhabitant, or proprietor of land in any town, aggrieved by the refusal of such town to discontinue any town way, or private way, and after due notice and hearing of all parties interested, order such way to be discontinued; saving, to parties interested, the same rights and remedies, as are provided in the thirty first section of this chapter.

SECT. 34. If any town shall unreasonably refuse, or delay, to approve and allow any town way or private way, laid out or altered by the selectmen thereof, and to put the same on record, any person aggrieved by such refusal or delay, if such way lead from land, under his possession and improvement, to any highway or town way, may, within one year thereafter, apply by petition in writing, to the commissioners. The commissioners may, unless sufficient cause shall be shown against such application, approve and allow of the way, as laid out or altered by the selectmen, and direct the said laying out, or alteration, and acceptance, to be recorded by the clerk of such town; which shall have the like effect, as if accepted by the town and recorded.

Towns may not counteract the decision of the commissioners.

SECT. 35. When any town way shall have been laid out or altered by the commissioners, it shall not, within five years thereafter, be discontinued or altered by the town. When any such way shall have been discontinued by the commissioners, the town shall not, within two years thereafter, lay out the same again.

Application to commissioners for appraisal of damages, on town ways.  
1822, 399, § 5.

SECT. 36. All applications to the county commissioners, for an inquiry of damages for the laying out, altering or discontinuing any town or private way, shall be made and filed in the office of the clerk of said commissioners, within twelve months next after the allowance and establishing of said way, and not afterwards; provided, it shall appear by the report of the selectmen, who laid out or altered said way, that notice was duly given to the parties, as provided in section, twenty eight, of this chapter; or if such town or private way was laid out, altered or discontinued by the county commissioners, that it shall appear by their records, that they gave notice to said parties of their meeting, in the manner provided, as to highways, in section, two, of this chapter.

**SECT. 37.** If no such notice thus appears to have been given by said selectmen or county commissioners, such application may be made and filed at any time, within one year after the expiration of said twelve months.

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If petitioner had no notice, further time allowed.

1823, 399, § 5.

Applicants may join, or sever, in their petitions.

1828, 399, § 5.

**SECT. 38.** In all applications for inquiry of damages, relating to town ways and private ways, the applicants may join, or sever, in the same manner, and the committee or jury shall consider and determine the right and interest of the applicants, in the real estate alleged to be damaged, as is herein provided in the case of high-ways.

**SECT. 39.** In addition to the remedies, herein before provided, for the recovery of the damages for the laying out, altering or discontinuing of any highway, town way or private way, the persons, entitled to such damages, may recover the same, when duly ascertained, as provided in this chapter, together with all costs taxed in his favor, in an action of debt against the parties liable; provided, that demand for the payment of the same shall have been made on the treasurer of any county or town, liable to pay the same, thirty days, at least, before the suit be brought.

Action to recover damages, after they are ascertained.  
1823, 399, § 6.

**SECT. 40.** If any town, liable to open and make or alter any highway, town way or private way, duly accepted and ordered by the county commissioners, shall neglect so to do, within the time limited by the provisions contained in this chapter, the said commissioners, on application therefor, shall appoint an agent, other than either of said commissioners, to cause the said road to be opened and made passable, or altered, as the case may be, by contract or otherwise; and when the same shall be agreed to be made passable, or altered, by contract, the agent, making the contract, shall file a certified copy thereof in the office of the clerk of the commissioners, from which he received his appointment; and said commissioners shall forthwith certify to the assessors of the town or plantation interested, the amount he has contracted to give, and the time, within which said contract is to be completed. The commissioners may examine into the doings of said agent, whenever they shall see cause, and may remove him, and substitute another, at discretion; and no account of such agent shall be allowed, without due notice given to the town interested; and after the completion of the service of the agent, and the final allowance of his accounts, the town shall be liable to pay all sums expended by the agent, with the incidental expenses of his agency and the settling of his accounts, adjudged by said commissioners to be reasonable, and the amounts, due on any contracts, by him made; and if such town shall neglect to pay the same, for thirty days, the commissioners shall issue a warrant of distress therefor against such town.

Appointment of an agent to open roads, if towns refuse.  
1821, 118, § 12.  
1834, 133, § 6.  
1836, 198, § 1.  
9 Greenl. 88, 93.

Proceedings.

**SECT. 41.** Whenever any county road, or town or private way, shall be discontinued, in whole or in part, by the county commissioners, said commissioners, in their return thereof, shall fix a time, at which such discontinuance shall take effect.

On discontinuance of highway, commissioners shall appoint the time therefor.  
1833, 79, § 2.

**SECT. 42.** Any highway, or town or private way, laid out by the county commissioners, and not opened within six years from the time allowed by the commissioners, agreeably to the provisions of this chapter, shall be deemed to be discontinued.

Ways discontinued, unless opened in six years.  
1831, 500, § 9.  
3 Fairf. 236.

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Rights and liabilities of plantations and their officers.  
1821, 118, § 22.

**SECT. 43.** The inhabitants of plantations, who are, or may be, empowered and required to assess taxes upon themselves, towards the support of government, or for defraying the charges of any county and their officers, shall be vested with like powers, be under the like obligations, and liable to like penalties, so far as such powers, obligations and penalties relate to the making, repairing or amending the highways, and for compensating any individual, who may suffer damage for default of the same, as towns and their like officers have, or are subject to; and like proceedings shall be had by, or against such plantations, in the premises, or their officers. The assessors of such plantations shall be held to perform all the duties required of the selectmen of towns, relating to highways, and invested with the same powers.

**ARTICLE III. LOCATION, BUILDING AND REPAIR OF HIGHWAYS, IN UNINCORPORATED PLACES.**

Commissioners to locate, and make and repair highways, in unorganized places, at the expense of the proprietors.  
1821, 118, § 23.

**SECT. 44.** The county commissioners, in their respective counties, on application duly made to them, pursuant to the provisions of the first section of this chapter, for the laying out, altering or discontinuing any highway in or through any tract, township, or plantation, other than towns, or such plantations, as are described in the section last preceding, or on petition for an order thereof, to amend and repair any such highway already laid out, shall have authority so to lay out, alter or discontinue, or amend and repair the same, or cause the same to be done; and the same shall be done at the expense of the proprietors of said tract, township or plantation, or of the county, or partly at the expense of each, as said court shall order. All the proprietors of such tracts of land, townships or plantations last mentioned, shall be held to pay their proportion, according to their interest, of all costs and expenses of making and repairing the ways aforesaid, through any part of the tracts, townships or plantations last mentioned; provided nevertheless, that all lands, reserved for the use of the first settled minister, the ministry, schools, or for the future appropriation of the legislature, in said tracts, townships and plantations last mentioned, shall be exempted from all taxes on account of highways.

Notice to be first given.  
1821, 118, § 24.

**SECT. 45.** On any application or petition, as mentioned in the section last preceding, the county commissioners shall cause notice thereof to be given, by publishing the substance of such application, with the order of the court thereon, three weeks, successively, in the newspaper published by the printer to the state, and such other paper as they shall order, that the proprietors of said lands may appear before said commissioners, at such time as they shall appoint by said order, to shew cause, why such highway should not be laid out, altered, discontinued, or amended and repaired, as the case may be.

Proceedings. Assessment.  
1821, 118, § 24.

**SECT. 46.** After notice, as aforesaid, and a due hearing of the parties, the said commissioners, if they see cause, may proceed to lay out, alter, or discontinue said highway, in the manner prescribed by law, or to order the same to be amended and repaired, at the expense of the proprietors or otherwise, as before provided in section, forty four. The proportion of the expenses, payable by said proprietors, shall be assessed and raised, as hereinafter provided.

**SECT. 47.** Whenever any highway shall be laid out by the county commissioners, through any unincorporated tract of land, the said commissioners shall decide, whether, in their opinion, such tract, or any part thereof, will be thereby enhanced in value. Said commissioners may, upon a plan of said tract, whether consisting of one or more townships, make as many divisions, as they may think equitable, conforming, as near as convenient, to known divisions, or separate ownerships; and they may assess upon each division, which they shall consider to be enhanced in value, towards the expense of making and opening such road, such sum, as, in their judgment, shall be proportionate to the value, and the benefits likely to result to it, from the establishment of such road.

**SECT. 48.** Said commissioners shall, thereupon, cause an assessment to be made on such tracts of land, township or plantation, or divisions thereof as aforesaid, if they see cause, at such rates per acre, as they shall judge necessary for making or opening such highway, and defraying the necessary expenses attending the same.

**SECT. 49.** The county commissioners, in their respective counties, on or before the fifteenth day of May, in each year, shall assess upon all unincorporated townships, or parts of such townships, a sum of money, sufficient to keep in repair the county highways, which are, or may be laid out and opened in such townships, or parts of townships, and also all roads which have been, or may be laid out and made therein by this state, or by this state and the commonwealth of Massachusetts, or roads therein, the repairs and protection of which this state has assumed, or may assume.

**SECT. 50.** As soon as may be after such assessment shall have been made, said commissioners shall publish a notice of the amount so assessed, specifying how much is assessed on such townships, or parts of townships, respectively, and the road, on which such assessment is to be expended, in some newspaper published in the county, if any, and in that published by the printer to the state; and shall certify, in writing, the same facts to the treasurer of the county, where the money is to be expended.

**SECT. 51.** Said commissioners may appoint suitable agents or an agent, not members of their board, to expend such assessment, in such proportions, on said tracts, and in such manner, as they shall think best; and such agent shall give bond, with sufficient sureties to their satisfaction, faithfully to expend the money, and render an account thereof on demand. The owner of any township, or part of a township, so assessed, shall have the privilege of expending his tax, under the direction of such agent, at any time before the fifteenth day of September, next after such assessment; provided, he give notice in writing of his intention, to the agent, on or before the first day of June of the same year: and any expenditure, so made, certified by such agent to the county treasurer, shall be received, as payment of so much of his said tax.

**SECT. 52.** The proprietors of said tracts, townships or plantations, or divisions thereof, whether holding several rights, or in common, shall be severally assessed their respective proportions in every tax, which may be ordered, for making and opening, or for altering or repairing the highways therein; provided, such proprietors fur-

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Assessment to be apportioned, according to the benefit conferred.  
1833, 79, § 1.

Same subject.  
1821, 118, § 24.

Annual assessment for repairs.  
1836, 242, § 1, 2.  
1840, 87, § 1.  
3 Greenl. 131.

Publication of notice of assessment.  
1836, 242, § 2.  
1840, 87, § 2.

Appointment of agent, to make repairs.  
1836, 242, § 2.  
1840, 87, § 3.

Proprietors may be severally assessed, by furnishing a description of their shares.  
1821, 118, § 24.  
1838, 345, § 1.



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nish the commissioners with an accurate description of their several rights or their several interests therein : and any one proprietor, who shall give a description of his interest in such tract, shall be separately assessed.

County treasurer to notify the state treasurer of the assessment.

**SECT. 53.** The treasurer of the county, where the land so assessed may lie, shall, forthwith, notify the state treasurer of said assessment, as provided in section, three, of chapter, fourteen.

State treasurer to publish notice of the assessment.

**SECT. 54.** The state treasurer shall give notice of such assessment, as provided in section, four, of chapter, fourteen.

Agent to expend money in repairs.

**SECT. 55.** The money, so assessed upon, and raised by the county commissioners on, said unincorporated tracts of land, shall be applied and expended by a committee, to be appointed, for the purpose, by the commissioners, in like manner as is provided in section, forty, of this chapter.

Proprietors of tracts may meet and assess themselves, for these purposes.

**SECT. 56.** The proprietors of any such tract, township or plantation, as has been described in section, forty four, are hereby authorized to call meetings, for the purpose of raising such sums of money, as they shall judge necessary, for making and repairing highways within their limits, and for choosing officers, for assessing and collecting the same, in the manner provided for proprietors of common and undivided lands, in chapter, eighty five.

**ARTICLE IV. LIABILITY OF TOWNS, AND OTHERS, TO REPAIR WAYS, AND PROCEEDINGS IN RELATION THERETO.**

Ways to be kept in repair.

**SECT. 57.** All highways, town ways, causeways and bridges, laid out or being within the bounds of any town, or any plantation, such as is described in section, forty three, of this chapter, shall be duly opened, and kept in repair, and amended, from time to time, that the same may be safe and convenient, for travelers and their horses, teams, carts and carriages ; and in default thereof, such town or plantation shall, on presentment of the grand jury for the county, in which such town or plantation is, and on conviction thereof, be liable to pay such reasonable fine, as the court, having jurisdiction thereof, may order.

Penalty for neglect.

Ways on the line between towns, how repaired.

**SECT. 58.** Whenever any highway shall be, or has been, laid out, on the dividing line between any two towns, or any town way, by the concurrent act of the selectmen of any two adjoining towns on each side of such dividing line, the selectmen of such towns shall have authority, for the purpose of making and maintaining such way, to divide the same, crosswise, for the purpose of assigning to each of said towns, by metes and bounds, their several parts of said way ; provided, such division and assignment shall, within one year after the making thereof, be accepted by each of the towns concerned, at a legal meeting thereof.

Said division and assignment shall hold each of said towns, to repair and support their respective parts of said highway or town ways, in the same manner, and subject to the same liabilities, in all respects, as if their part lay, wholly, in such town.

If the towns disagree, county commissioners may make division.

**SECT. 59.** If the selectmen of said adjacent towns cannot agree on such division, or if either of said towns shall neglect or refuse, for the term of one year, to accept of such division, the selectmen of either of said towns may apply, in writing, to the county com-

missioners, who shall thereupon have power to make a just and equitable division, as aforesaid, and assign to each of said towns, by metes and bounds, their respective parts thereof; first giving notice thereof to all persons interested, by publishing such written application, and the time and place assigned for making such division, three weeks successively, in a public newspaper printed in said county, or by serving a copy thereof upon the town clerks of said towns, thirty days previous to the time appointed.

SECT. 60. The county commissioners may, if they see cause, lay out a highway in like manner as other highways, on the dividing line between two towns, a part of the width thereof in each of said towns; and at the same time may, without special notice therefor, make such division and assignment, as is provided in the preceding section.

SECT. 61. All such divisions and assignments, made by the county commissioners, shall be duly entered on their records; and thereupon said towns shall be holden to open and make, or repair, their respective parts of said ways, in the same manner, and subject to the same liabilities, as in case of county or town ways, laid out wholly in such town.

SECT. 62. There shall be chosen in each town, at the annual meeting, two or more suitable persons, to be surveyors of highways; to be notified and sworn like other town officers: and in case any one refuse to accept, he shall forfeit the sum of ten dollars, to the use of such town; but no person shall be held to serve in said capacity, more than once in three years. And in all cases, where vacancies occur of surveyors in any town, the selectmen are authorized to appoint one or more surveyors, to fill such vacancies.

SECT. 63. The selectmen of every town, before the first day of May annually, shall, in writing, assign to each surveyor, his divisions and limits; which assignment he is, hereby, required to observe.

SECT. 64. Whenever any town shall elect the selectmen, to be surveyors of highways, they may, in writing, delegate this power, or any part thereof, to such persons as they deem proper.

SECT. 65. Every town shall raise such sum of money, to be expended in labor and materials on the highways and town ways, as they shall determine to be necessary; and the assessors shall assess the same on the polls and the estates, real and personal, of the inhabitants, residents and non residents of their town, as other town charges are by law assessed; and shall deliver, to each surveyor, a list of the persons, and the sums, at which they are severally assessed to be expended within his limits, on or before the first day of June in each year; excepting in Portland.

SECT. 66. At least two thirds of the sums, granted by any town for making and repairing ways, shall be laid out and expended for that purpose, before the first day of July, next after granting the same.

SECT. 67. The surveyor shall give reasonable notice, in writing if desired, to each person on his list, resident in the town, of the sum he is assessed to the highways and town ways, and also forty eight hours' notice, extraordinary casualties excepted, of the times

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Such division may be made, when the highway is located. 1835, 155, § 3. 13 Mass. 294.

Same subject. 1835, 155, § 2, 3.

Surveyors of highways to be chosen. 1821, 118, § 15.

Assignment of surveyor's limits. 1821, 118, § 15. 1 Pick. 418. 4 Pick. 149.

Right of selectmen, when chosen surveyors. 1821, 118, § 15. Highway taxes, how raised, assessed and apportioned. 1821, 118, § 15. 1832, 21.

Two thirds to be expended before first of July. 1821, 118, § 15.

Surveyor to give notice for furnishing labor or materials. 1821, 118, § 15.

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Ways, blocked with snow, to be opened. Sudden injuries to be repaired. 1821, 118, § 13. 13 Pick. 343.

**SECT. 68.** When the highways or town ways, in any town, are blocked up or incumbered with snow, the surveyor, within whose limits the same may happen, shall, forthwith, cause so much thereof to be removed or trodden down, as will render the roads passable, in such way and manner as the town shall direct ; otherwise at his discretion. In case of any sudden injury to bridges or roads, he shall, without delay, cause the same to be repaired.

Towns to furnish apparatus, for breaking out snow. 1836, 219, § 2.

**SECT. 69.** There shall be furnished and kept in repair, in each surveyor's district, through which there is a mail route, in any town, some effectual apparatus for opening roads, obstructed with snow ; and it shall be the duty of surveyors of highways, whenever the roads are so obstructed, to make use of the same in the districts aforesaid, and break and keep open said roads, to the width of at least ten feet.

Surveyors to return a list of delinquents, who may be afterwards assessed. 1821, 118, § 13.

**SECT. 70.** The surveyor, at the expiration of his term, shall render to the assessors a list of such persons, if any, as shall have been deficient, on due notice, in working out or otherwise paying their highway tax ; which deficient sums shall be placed by the assessors in a distinct column, in the next assessment of a town tax upon such delinquents, and collected like other town taxes, and paid into the town treasury.

Surveyors to remove obstructions. 1821, 118, § 14.

**SECT. 71.** Every surveyor is hereby authorized, within his district, to remove any obstacle, natural or artificial, which shall, in any wise, obstruct, or be likely to obstruct, or render dangerous the passage of any highway or town way.

May dig for materials in lands, not inclosed. 1821, 118, § 14.

**SECT. 72.** He may also dig for stone, gravel or other materials, suitable for making or repairing the roads, in any land, not planted nor inclosed, and the same may remove to any place on the roads in his district, where he may judge it necessary ; provided however, that, if the land, where such materials are dug up, be not within the limits of the highway, or town way, as laid out, the proprietor thereof shall be entitled to an equivalent in money, from the town, to be recovered after demand on, and refusal by the surveyor, in an action on the case, as on an implied promise.

Water courses, not to incommode individuals. 1821, 118, § 14.

**SECT. 73.** No surveyor of highways shall, without the approbation of the selectmen, first being had in writing, cause any water course, occasioned by the wash of a highway or town way, to be so conveyed by the side of such way, as to incommode any person's house, store, shop or other building, or to obstruct any person in the prosecution of his business ; and any person, aggrieved by the conveying of such water course, in manner aforesaid, may complain to the selectmen, who, on receiving such complaint, shall view the water course complained of ; and, after due examination of the

same, may direct the surveyor to alter the said water course, in such manner as they shall determine: CHAP. 25.

SECT. 74. When the sum appropriated and assessed, for the repair of highways and town ways, in the limits of any surveyor, be insufficient, such surveyor, with the consent of the selectmen, obtained in writing, may employ inhabitants of the town upon the repair of ways in his limits, to an amount of labor, not exceeding fifteen per centum in addition to the highway tax, committed to him, to make up the deficiency. The persons, thus employed, shall be paid a reasonable compensation from the town treasury, or in such other mode, as the town may have previously prescribed.

Proceedings, if amount raised be insufficient to repair roads. 1821, 118, § 15. 3 Greenl. 445. 13 Pick. 377. 2 Fairf. 367. 13 Maine, 293.

SECT. 75. Towns may raise such sums of money, from time to time, as they may deem necessary, to be laid out in making or repairing highways or town ways, including bridges, in such towns; and may direct the same to be assessed upon polls and estates, as other highway taxes are, and collected, as other cash taxes are: and the same shall be expended for the purposes aforesaid by the selectmen.

Towns may raise cash taxes, to repair ways; how assessed. 1821, 118, § 19. 1823, 329, § 4. 1832, 17, § 1. 1836, 219, § 1.

SECT. 76. Any town, at an annual meeting, may authorize their assessors to abate any part, not exceeding three dollars, of the road tax of any inhabitant thereof, whether payable in money, or otherwise; provided, such inhabitant shall exhibit to such assessors satisfactory proof of his owning and exclusively using, on the public roads, cart wheels having felloes, not less than six inches in width, during the year for which the tax may be assessed.

Abatements, on account of wide rimmed wheels. 1829, 427.

SECT. 77. Every town may authorize their surveyors, or other persons, to enter into contracts, for making or repairing the highways or town ways, within the same.

Repair of ways, by contract. 1821, 118, § 16.

SECT. 78. Every town may also empower the surveyors to collect all such taxes, as shall not be paid in labor or otherwise, within the time limited by law, or at such periods, as may be agreed upon by the town; and for that purpose, the assessors shall deliver, to them, warrants of distress, which shall be in substance like the warrants, prescribed by law, for collecting other town taxes: or they may deliver a warrant, for collecting the deficiency in any highway tax, to the collector, who shall then proceed to collect the same in like manner, as other taxes are by law to be collected; and shall pay over the same to the respective surveyors, who shall be held to account with the selectmen, for the expenditure thereof.

Surveyors may be empowered, to distrain for non payment of road taxes. 1821, 118, § 16. 15 Maine, 247.

SECT. 79. If any money shall remain unexpended, in the hands of the surveyors, after the expiration of their office, they shall pay the same to the town treasurer.

Surplus, to be paid to town treasurer. 1821, 118, § 16.

SECT. 80. If any surveyor shall neglect to pay over such sums to the treasurer, for the time being, on demand, such treasurer may recover the same, with twenty per cent. in addition thereto, in an action for money had and received; to be commenced in the name of, and for the use of the inhabitants of the town.

Penalty, if surveyor neglect to pay over such surplus. 1821, 118, § 16.

SECT. 81. Every surveyor, who shall receive his rate bill, shall exhibit the same to the selectmen, on the first Monday of July, annually, and also at the expiration of the term for which he may have been appointed; and at those times, respectively, shall render an account of all moneys, that may have been expended by him on

Surveyors to account with selectmen. Penalty for neglect. 1821, 118, § 16.

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the ways : if he unreasonably neglect so to do, he shall, for each offence, forfeit twenty dollars, to the use of the town ; to be recovered with costs, in an action of debt, to be prosecuted in the name of the town, by the treasurer thereof.

Towns may elect road commissioners. 1832, 27, § 1.

**SECT. 82.** Any town, at its annual meeting, may, if they see cause, elect, by ballot, one or more road commissioners, not exceeding five, in lieu of surveyors of highways. Said commissioners shall be duly sworn ; and vacancies in the board may be filled in like manner, from time to time during the year, at any town meetings duly notified.

Their powers, liabilities and compensation. 1832, 27, § 1.

**SECT. 83.** Such commissioners, except as hereinafter provided, shall have all the rights and powers, conferred upon, and be subject to the duties, enjoined upon, surveyors of highways in this chapter. They shall also be liable to the same penalties, for neglect and misfeasance, so far as they may be, individually and personally, guilty. For their services they may receive such compensation, as the town may provide. Said commissioners may, at any time, assign the care and oversight of any of the public roads in the town, to any of their own number.

Their mode of proceeding. 1832, 27, § 2.

**SECT. 84.** The town assessors shall, on request, deliver to said commissioners a rate bill of all the highway taxes, by them assessed for the current year, payable in labor or in materials, with a statement of the rates and prices affixed to the same by the town. If there be more than one commissioner, they may assign and distribute, to any of their number, the collection of said rate bill, or any part thereof ; who shall proceed to notify the persons taxed and require of them the like services, as a surveyor may do, within the limits assigned by the selectmen ; and whose certificate, made to the assessors, shall be evidence of such notice, and of the neglect of any persons taxed, who may not comply therewith.

Manner of notifying non residents. 1832, 27, § 3.

**SECT. 85.** When any persons, taxed on said rate bills, are non resident proprietors of real estate in said town, or are absent, leaving no attorney or agent, duly entered with the town clerk, or otherwise known to the commissioners, having charge of such rate bill, such commissioners may give them notice of the amount assessed to them, respectively, and the times and places, for them to appear and work out, or otherwise discharge, the same, by posting up advertisements thereof, in two or more public places in said town. If no person shall appear, within twenty days thereafter, to discharge such taxes, agreeably to such notice, such commissioners shall make due return of such notice and neglect to the assessors, as provided in the last section.

Proceedings in collecting delinquent road taxes. 1832, 27, § 4, 5.

**SECT. 86.** Said delinquent taxes may be collected in the same manner, as other taxes assessed by towns are collected, by any town collector, or one of said commissioners, or such other person as the said commissioners may designate to the assessors, as collector of delinquent highway taxes. Such collector shall be sworn, and shall give such bonds to the town, for the faithful discharge of his duties, as said commissioners shall direct and approve. The assessors shall duly commit such delinquent taxes with their warrant, in due form of law to enforce the collection thereof, to the collector thus designated ; who shall possess the same powers, as other col-

lectors of town taxes; and shall render his account, and make payment, of such sums, as he may collect, to the commissioners, until the next annual town meeting, and afterwards to the town treasurer. Said treasurer shall have the like powers, and be under the like obligations, to compel such account and payment, as he has in regard to the collector of town taxes.

**SECT. 87.** Any town choosing road commissioners, as aforesaid, may, at their annual meeting, authorize the said commissioners to receive money in payment of any tax, to them committed, in lieu of the labor or materials, specified in the rate bills, at such uniform discount from the nominal prices and rates of such labor and materials, fixed by the town, as it may determine; provided the same be paid before the amount shall have been certified to the assessors, as delinquent.

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Commissioners may be authorized to make a discount to those, who pay money.  
1832, 27, § 6.

**SECT. 88.** When any town shall have more than one road commissioner, the selectmen shall designate one of them, to be chairman of the board of commissioners, who shall keep the rate bills to them committed for the use of the board, shall make and keep the records of accounts of the same, and receive all moneys paid on account of said rate bills, and hold the same, subject to be paid out, as the commissioners shall order. The said chairman shall give bond to the town, for the faithful performance of all his duties, in such penal sum, and with such sureties, as the selectmen shall approve. When only one road commissioner shall be appointed and serve, he shall give bonds in like manner, and be solely responsible, for all duties and liabilities pertaining to the office, under any of the provisions of this chapter.

Chairman of road commissioners, and his duties.  
1832, 27, § 7.

**SECT. 89.** If any person shall receive any bodily injury, or shall suffer any damage in his property, through any defect or want of repair, or sufficient railing, in any highway, town way, causeway or bridge, he may recover in a special action on the case, of the county, town, or persons, who are by law, obliged, to repair the same, the amount of damage sustained thereby, if such county, town or persons had reasonable notice of the defect or want of repair. If the life of any person shall be lost, through any such deficiency, the county, town or persons liable to keep such highway, town way, causeway or bridge in repair, provided they have reasonable notice of such deficiency, shall forfeit not exceeding one thousand dollars, to be paid to the executor or administrator of the deceased, for the use of his heirs, to be recovered by indictment.

Damages through defect of roads. Penalty, if life be lost through such defect.  
1821, 118, § 17.  
1825, 300, § 3.  
1 Mass. 153.  
4 Mass. 422.  
7 Greenl. 63, 442.  
2 Fairf. 271, 335.  
14 Maine, 198.  
16 Maine, 187.  
3 Pick. 267.  
7 Pick. 188.  
9 Pick. 146.  
13 Pick. 94, 363.  
16 Pick. 189, 541.

**SECT. 90.** In case the inhabitants of any town, or organized plantation, shall be fined for any deficiency in any highway or town way, by indictment, as provided in the fifty seventh section of this chapter, the surveyor within whose limits the defective way is, shall be liable to refund the amount of the fine and costs, to be recovered by the town or plantation, in an action on the case; or the surveyor may, in the first instance, be liable to be prosecuted, instead of the town or plantation, by indictment, and fined, accordingly, for any such deficiency in his limits; provided, such deficiency arise from his neglect, in not expending the money in his bills, or, in case of want of funds, in his not giving due notice of such deficiency to the selectmen of the town, or assessors of such plantation.

Surveyor liable for fines, accruing through his neglect.  
1821, 118, § 18.

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Only one indictment against a town, at the same term of a court.  
Costs.  
1836, 216, § 1, 2.

**SECT. 91.** Only one indictment shall be presented, at any one term of any court, against any one town, for neglect of opening highways, or town ways, or keeping them in repair; but as many counts may be inserted in the same, as shall be necessary, to describe all the portions of ways, alleged to be deficient. At the term when such indictment is found, the prosecuting officer shall not be permitted to tax a greater number of days attendance, than the grand jury were in session, at that time.

Courts to appoint agents to expend fines in repairing roads.  
1821, 118, § 20, 21.  
1825, 300, § 6.

**SECT. 92.** All fines imposed on any town or plantation, for deficiencies of the ways and bridges in the same, or on any surveyor for the like cause, shall be appropriated to the repairing of such defective ways and bridges. The court, imposing such fine, shall appoint one or more persons to superintend the collection and application of the same to the purposes aforesaid; and the agents, so appointed, shall, within three months after collecting any such fine, make a return of their doings to the clerk's office of said court, to be put on file, and be opened for the inspection of the parties interested, and subject to be audited and corrected by the court, on application of any such party.

Penalty for such agent's neglect.  
1825, 300, § 6.

**SECT. 93.** If any such agent shall be guilty of gross neglect, in the premises, or shall, fraudulently, misapply or retain the amount of the fine, so paid him, he shall forfeit double the amount of such fine, to be recovered by indictment, to the use of the town or plantation, in whose limits said fine was to be expended.

Assessment and collection of fines.  
1825, 300, § 4.

**SECT. 94.** Whenever a fine shall be imposed on any town or plantation, for deficiency of its ways or bridges, the clerk of the court, imposing the fine, shall forthwith certify the same to the assessors of such town or plantation. The assessors, thereupon, shall assess the same upon the polls and estates of such town or plantation, like other town taxes; and certify the same to the clerk of said court; and shall cause the same to be collected by their collector, and paid over to the agent aforesaid, at such time, as said court may order.

Clerk may issue a warrant, to enforce collection.  
1825, 300, § 4.

**SECT. 95.** Should the same, when assessed, not be paid within the time limited by the court, the clerk, on application of such agent, may issue his warrant to enforce the collection thereof, as the treasurer of the state is authorized to issue warrants, to enforce the collection of the state tax.

If assessment be not made, nor road repaired, warrant of distress to issue.  
1825, 300, § 5.

**SECT. 96.** If such assessors shall neglect to make such assessment, and to certify the same to the clerk of the said court, and such town or plantation shall not cause the defective way or bridge to be repaired, to the acceptance of the agent, and pay the costs of prosecution to the clerk, within four months after notice of such fine, the court may issue a warrant of distress against such town or plantation, for the collection of the fine and costs, or such part of the same, as may be in arrears.

Any person may remove fences, not authorized, across a road.  
Remedy.  
1821, 118, § 25.  
3 Fairf. 32.

**SECT. 97.** It shall be lawful for any person to take down or remove any gates, rails, bars or fence, upon or across any highway, or town way, unless the same shall there be placed for the purpose of preventing the spreading of any infectious disease, or unless the same shall have been erected or continued, by the license of the county commissioners for the same county, or of the selectmen of

the town; and any person aggrieved by such taking down or removal, may apply to the said commissioners, or said selectmen, respectively, who, if it shall appear that such gates, rails, bars or fence, were erected by license, as aforesaid; may order the same to be replaced by the person, who removed them.

**SECT. 98.** Whenever any logs, lumber or other obstructions shall be, unnecessarily, left on any highway or town way, it shall be the duty of the surveyor, within whose limits the same may be so left, or, in his absence, of any other surveyor, within the town, forthwith to remove the same. Such surveyor shall not be liable for any loss or damage, happening thereto, unless occasioned by his gross negligence, or by design. The surveyor, so removing the same, if no person appear to indemnify him, for the expense and trouble of removing, may sell at public vendue, so much of said logs, lumber or other obstructions, so removed, as shall be sufficient for that purpose, with charges of sale; first giving notice of the time, place and cause of such sale, by posting up notifications in two public places in said town, seven days at least prior to such sale. The person, through whose neglect or wilful default, said logs, lumber or other obstructions shall be so left, shall also be liable to be prosecuted, as at common law, for such nuisance.

Surveyor to remove obstructions. Remedy for the expenses. 1821, 118, § 25. 1831, 495. 7 Mass. 378.

**SECT. 99.** Whenever any building, fence, or other incumbrance, erected, or continued, on any highway, or town or private way, common, training field, burying place, landing place, or other land appropriated for public uses, or for the convenience of the inhabitants of any county, town, parish or other local district, shall be adjudged and determined, a nuisance, and ordered to be abated, and the materials of such building, fence or other incumbrance, upon a sale thereof by auction, shall be insufficient to pay the costs and charges of prosecution and removal, the court, from which the process for removal shall issue, may order the deficient sum to be raised and levied, from the goods and chattels of the party, who shall be convicted of erecting, or continuing, such nuisance.

When buildings or fences are adjudged nuisances on roads, mode of obtaining pay for removal. 1821, 118, § 26.

**SECT. 100.** Where buildings or fences have been erected, or continued, for more than twenty years, fronting upon or against any training field, burying place, common, landing place, highway, private way, street, lane, or alley, and, from length of time, or otherwise, the boundaries thereof are not known, or cannot be made certain by the records, or by any monuments, such fences or buildings shall be deemed or taken to be the true boundaries thereof; but, when such boundaries can be made certain, no length of time, less than forty years, shall justify the continuance of a fence or building, on any town or private way, or on any highway, training field, burying place, landing place, or other land appropriated for the general use or convenience of the inhabitants of the state, or of any county, town, or other local district; but the same may, upon the presentment of a grand jury, be removed as a nuisance.

When buildings or fences are to be deemed boundaries of roads. 1821, 118, § 27. 1836, 238. 17 Pick. 309.

**SECT. 101.** If, on the trial of any indictment, or action brought to recover damages for an injury received, by reason of any deficiency or want of repair, in any highway, town way, causeway or bridge, it shall appear, that the county, town or plantation, against which such suit is brought, has, at any time within six years before

Towns estopped to deny location of roads, in certain cases. 2 Greenl. 55. 4 Greenl. 270. 5 Greenl. 368. 3 Pick. 408.



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Guide posts.  
1821, 120, § 1.

**SECT. 102.** Every town shall erect and maintain guide posts on the highways and other ways, within the town, at such places, as shall be necessary or convenient, for the direction of travelers, in the manner hereinafter provided.

Selectmen to direct where they shall be located. Penalty for their neglect.  
1821, 120, § 2, 4.

**SECT. 103.** The selectmen of each town shall determine upon such places, for the erection and maintenance of guide posts therein, as, in their judgment, shall be found necessary and convenient; and shall cause a fair record of their determination to be entered and kept, on the books of the town clerk. For any unreasonable neglect of their duty, the selectmen, for the time being, shall forfeit and pay to the use of the state, at the rate of five dollars a month, during such neglect, to be recovered by indictment.

Form and inscriptions; substitutes.  
1821, 120, § 3.

**SECT. 104.** At each place, thus determined upon and recorded, the town shall cause to be erected, a substantial post, of not less than eight feet in height, near the upper end of which shall be placed a board or boards, upon which shall be legibly and plainly painted, in black letters upon a white ground, the name of the next town on the route, and such other town or place of note, as the selectmen shall think proper, together with the distance or number of miles to the same; also the figure of a hand, with the fore finger thereof pointing to such town or place. Provided nevertheless, that the inhabitants of any town, at any annual meeting, may agree upon some suitable substitute for such guide posts.

Fines for neglect of towns.  
1821, 120, § 4.

**SECT. 105.** Every town, which shall neglect or refuse to erect and maintain such guide posts, or some suitable substitutes therefor, in the places recorded and determined on, as aforesaid, shall forfeit and pay, to the use of the state, five dollars, for each and every guide post, they shall so neglect or refuse to erect and maintain, to be recovered by indictment.

Plantations subject to like obligations.  
1821, 120, § 1, 2, 3, 4.

**SECT. 106.** Every plantation, assessed in any public tax, shall be under the same obligations to erect and maintain guide posts, as towns are, by virtue of this chapter, and subject to the same penalties for neglect. The duties required of selectmen of towns shall be performed by the assessors of such plantations under the like penalties.

#### ARTICLE V. OF MAKING AND REPAIRING PRIVATE WAYS.

Proprietors of private ways may call meetings.  
1821, 119, § 1.

**SECT. 107.** Whenever any four or more persons shall be proprietors and rightful occupants of any private way or bridge, and any three of them shall make application in writing to a justice of the peace, to call a proprietors' meeting, the said justice may issue his warrant therefor, setting forth the time, place and purpose of the meeting; and said warrant shall be posted up in some public place in the town, in which such way or bridge is situate, seven days at least before the time, appointed for said meeting.

Proceedings and powers, when assembled.  
1821, 119, § 1.

**SECT. 108.** The proprietors and occupants, so assembled, shall choose a clerk and surveyor, both of whom shall be sworn. They may also determine the manner of calling future meetings, what repairs on said way or bridge are necessary, and each proprietor's

and occupant's proportion of labor and materials, to be furnished for such repairs. The surveyor shall have the like powers, with respect to such way or bridge, as are lawfully exercised by the surveyors of highways.

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SECT. 109. If any proprietor or occupant, when duly required by the surveyor, shall neglect or refuse to furnish his proportion of labor or materials for the repair of such way or bridge, determined on, as provided in the section preceding, he shall be subject to the like penalties, as are provided, in case of highways, and to be recovered in like manner.

Penalties on delinquent proprietors.  
1821, 119, § 1.

SECT. 110. If any surveyor, thus chosen by said proprietors or occupants, shall refuse or neglect to accept that trust, and to take the oath aforesaid, he shall forfeit the sum of four dollars, to be recovered in manner aforesaid.

Penalty, if surveyor refuse to accept.  
1821, 119, § 2.

SECT. 111. The said proprietors and occupants, at any legal meeting called for the purpose, may authorize their surveyor, or any other person, to contract by the year, or for a shorter time, for making and keeping in repair any such way or bridge, to them belonging; and for that object may raise such sum of money, as they may judge necessary, and choose assessors; who shall assess the same on the said proprietors and occupants, in proportion to their interest in such way or bridge; and who shall deliver the bill of such assessments to the said surveyor, with proper warrants of distress, in substance, as is prescribed by law for collecting town taxes.

Proprietors may make repairs by contract, and raise money.  
1821, 119, § 3.

SECT. 112. Such surveyor may levy and collect all taxes for the purpose aforesaid, in the same manner, as surveyors of highways may be empowered to collect highway taxes, by virtue of section, seventy eight, of this chapter.

Surveyor may distrain for such taxes.  
1821, 119, § 3.

SECT. 113. If any such surveyor shall refuse or neglect to pay over the moneys so collected, to such persons, as he, in his warrant of distress, shall be required, when demanded, he shall be liable to the same penalty, as is provided in section, eighty, of this chapter, in case of surveyors of highways, failing to pay over moneys to the town treasurer, in like circumstances, to be recovered in a like action.

Penalty for his neglect.  
1821, 119, § 3.

SECT. 114. All suits, brought to recover forfeitures, under the one hundred ninth, one hundred tenth, and one hundred thirteenth sections of this chapter, shall enure to said proprietors and occupants; and the amount recovered shall be expended on such private way or bridge. In all processes, pertaining to such suits, it shall be sufficient, to describe such proprietors and occupants, in general terms, as the proprietors and occupants of such way or bridge, the same to be clearly described therein; and the validity of such processes shall not be affected by any change of the plaintiffs, arising by death of any of them, or other transfer of interest.

Recovery and appropriation of forfeitures.  
1821, 119, § 2.

#### ARTICLE VI. OF THE LIABILITY OF OCCUPANTS OF STATE LANDS, FOR REPAIR OF ROADS.

SECT. 115. When any land, the title of which is in the state of Maine, is in the occupancy or possession of any person under the state, he shall be liable to be assessed therefor, in the same manner, as if the title were in the occupant or possessor; but the

Occupant of state lands to be taxed, in proportion to his interest.  
1839, 391, § 1, 2.

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assessors of any town or plantation, where any such lands may lie, shall, in estimating the value thereof, deduct the amount due the state, so that the possessor or occupant shall be taxed only for his interest therein, according to its just value.

Manner of enforcing payment.

SECT. 116. The right and interest of any person to any lands, the fee of which is in the state, shall be held liable for all taxes, assessed thereon; and the said interest shall be forfeited, if the taxes, assessed thereon, be not paid, in the same manner as real estate is forfeited. And in all assessments on such lands, or on the interest of any person in such lands, whether by the county commissioners, for making or repairing highways, or by the assessors of any town or plantation for any legal purpose, the same proceedings shall be had, in the assessment and collection thereof, as if the state had no claim to said lands; and any person interested shall have the right to redeem the same, in such manner, as is provided for redeeming real estate taxed.

CHAPTER 26.

OF THE LAW OF THE ROAD.

- SECT. 1. Travelers with vehicles, meeting on the road, to pass to the right.
- 2. Modification of this rule.
- 3. Duty, when one traveler wishes to pass another.
- 4. Teams and carriages, not to travel without a driver, nor obstruct a road.
- 5. Bells to horses, with sleighs or sleds.
- 6. Penalties.

- SECT. 7. Stage drivers, not to leave horses unfastened.
- 8. Proprietors of bridges may restrict travelers passing thereon.
- 9. Selectmen of towns may do the same.
- 10. Penalty for violation.
- 11. Wagons, on certain roads, to have wide rimmed wheels.
- 12. Penalty for violation.
- 13. Cart or wagon may be libeled.

Travelers with vehicles, meeting on the road, to pass to the right. 1824, 245, § 1.

SECTION 1. Whenever any persons shall meet each other, on any bridge, turnpike, or other road, traveling with carriages, wagons, carts, sleighs or other vehicles, each person, so meeting, shall seasonably turn or drive his carriage or other vehicle to the right of the middle of the traveled part of such road or bridge, when practicable; so that the respective carriages, or other vehicles aforesaid, may pass each other, without interference.

Modification of this rule. 1824, 245, § 1.

SECT. 2. Where it is difficult or unsafe for persons traveling, with any of the aforesaid carriages or other vehicles, on account of their being heavily loaded, or otherwise, to turn or drive their carriages, or other vehicles, to the right of the middle of such traveled part, as aforesaid, any person, thus prevented, when meeting with any other person traveling with any of the carriages, or vehicles aforesaid, shall stop a reasonable time at a convenient part of the road, to enable such other person to pass by.

Duty, when one traveler wishes to pass another. 1824, 245, § 2.

SECT. 3. Whenever any person, traveling with any carriage or vehicle, as aforesaid, on any bridge or road, shall overtake any other person, with any such carriage or vehicle, either stationary at

some inconvenient place for passing by, or traveling at a slower rate, and shall request such other person, to permit him to pass, it shall be the duty of the person, so overtaken, to turn or drive his carriage or vehicle to the right or left of the middle of the traveled part of said bridge or road, or to stop a reasonable time, in some convenient place, for the other person to pass by.

SECT. 4. No person shall permit his carriage or other vehicle, to travel or pass upon any such bridge or turnpike or other road, without a suitable driver or conductor; nor shall leave the same, on such bridge or road, stationary, in such a situation, as to obstruct other persons, traveling with any carriage or other vehicle.

Teams and carriages, not to travel without a driver, nor obstruct a road. 1824, 245, § 3.

SECT. 5. No person shall travel, on any bridge, turnpike or other road, with any sleigh or sled, drawn by one or more horses, unless there shall be three or more bells to such horse, if but one, or to the foremost horse, if more than one.

Bells to horses, with sleighs or sleds. 1824, 245, § 4.

SECT. 6. Every person, offending against either of the foregoing provisions, shall forfeit, for each offence, not less than one dollar, nor more than twenty dollars, to the use of the state, to be recovered on complaint of any person, aggrieved thereby, before any justice of the peace in the county, where the offence shall have been committed, made within sixty days thereafter. Any person, injured by any of the offences or neglects aforesaid, shall also be entitled, to recover his damages, in an action on the case, to be commenced within one year after such injury.

Penalties. 1824, 245, § 5.

SECT. 7. No driver of any stage coach or other vehicle, for the conveyance of passengers for hire, shall, when any passenger is within or on such coach or vehicle, leave the horses thereof, without some suitable person to take charge and guidance of them, or without fastening them in a safe and prudent manner; and the person, offending against this section, may be punished by imprisonment, not exceeding one month, or by fine, not exceeding thirty dollars.

Stage drivers, not to leave horses unfastened.

SECT. 8. The incorporated proprietors of any bridge, or the directors or agents of the same, may prohibit any person, from riding or driving any horse at a pace, faster than a walk, over such bridge.

Proprietors of bridges may restrict travelers, passing thereon. 1833, 53, § 1.

SECT. 9. The selectmen of any town may prohibit any person, from riding or driving any horse, at a pace faster than a walk, over any bridge, covered with plank, for the length of fifty feet; such bridge being a part of a highway or town way, within the limits of such town.

Selectmen of towns may do the same. 1833, 53, § 2.

SECT. 10. Any person, wilfully riding or driving any horse, contrary to the provisions of either of the two preceding sections, shall be liable to a penalty, not exceeding five dollars, to be recovered by the proprietors of such bridge, or the inhabitants of such town, respectively; provided, that a board, giving notice of such liability, legibly printed in black letters on a white ground, be kept exposed, in a conspicuous position, at each end of said bridge: but no person shall be liable to such penalty, driving after sunset, or before sunrise, unless he had actual knowledge of such prohibition and penalty.

Penalty for violation. 1833, 53, § 3.

SECT. 11. No cart, nor wagon, drawn by more than one horse, Wagons, on

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certain roads, to have wide rimmed wheels. 1833, 52, § 1. 1839, 371.

shall pass upon the Mattanawcook state road, nor upon the United States military road, in this state, unless the feloes of the wheels thereof be, at least, four inches in width; and no cart or wagon, drawn by oxen, shall pass upon said roads, or either of them, unless the feloes of the wheels thereof be, at least, six inches in width; provided, that this restriction shall not apply to any cart, wagon or other carriage, the property of the United States, or of this state, nor to any pleasure carriage, nor to any cart or wagon, drawn by two oxen or two horses only, carrying a load, not exceeding fifteen hundred pounds.

Penalty for violation. 1833, 52, § 2.

**SECT. 12.** If any cart or wagon shall pass upon either of said roads, contrary to the provisions of the preceding section, the owner or driver thereof shall forfeit not less than ten dollars, for each offence, together with one dollar, in addition, for each mile of said road passed, as aforesaid, to the use of the state; to be recovered by complaint before any justice of the peace for the county, in which such offence may have been committed, with costs.

Cart or wagon may be libeled. 1833, 52, § 2.

**SECT. 13.** Any such justice of the peace, before whom such complaint may be pending, may also, on libel or complaint therefor, issue his warrant, to seize and detain the carts or wagons, with the teams thereof, found on either of said roads, having been used by any person, in violation of the provisions of section, eleven, of this chapter; which may be held to respond the fine and costs, to be awarded against such owner or driver.

**CHAPTER 27.**

OF FERRIES.

- SECT. 1.** No person to keep a ferry, without license.
- 2. County commissioners may grant licenses, and establish tolls.
- 3. Ferryman liable for damages, through his neglect.
- 4. Ferryman to keep a good boat, and attend.
- 5. Penalties for neglect.
- 6. Towns to provide ferrymen, if commissioners require.
- 7. Ferries between towns, to be provided at their joint expense.
- 8. Forfeiture, if towns neglect.
- 9. Penalty for keeping a ferry, without license.

- SECT. 10.** Ferrymen, to level ice, and repair passage way, in winter.
- 11. Condition of ferryman's bond.
- 12. Forfeiture for neglect to repair passage way.
- 13. Prohibition of horse or steam ferries. Exceptions.
- 14. Persons authorized to use horse or steam ferries, may use other boats.
- 15. Penalties for obstructing ferries.
- 16. Exception to this liability.
- 17. Proprietors of ferries may sink piers.
- 18. Mode of recovering forfeitures.

No person to keep a ferry, without license. 1821, 176, § 1. 3 Greenl. 365.

**SECTION 1.** No person shall keep a ferry, and receive pay, unless he shall first obtain a license therefor, from the county commissioners; and such license may be granted for such time, as the commissioners shall think proper, and they may revoke it, when necessary; excepting where ferries are already established by law.

County commissioners may

**SECT. 2.** Said commissioners are hereby authorized to grant licenses to such persons, and for such places, as they shall judge

suitable; excepting where ferries are already established. They shall also establish the fares or tolls, at each ferry by them licensed, for passengers, beasts, vehicles, or other things, there transported; always having regard to the comparative length and situation of each ferry, and the number of persons, passing the same; and, in all cases, taking a bond from each person licensed, as a ferryman, in such penal sum, as they think necessary, to the treasurer of the state, with sufficient sureties, for the faithful performance of his duties.

**SECT. 3.** Any person, who shall sustain an injury, in his person or property, by the negligence or default of any ferryman, may have a remedy, in an action upon the bond required in the section preceding. In such action, the like proceedings may be had, as in the case of actions brought on the bonds of sheriffs, as provided in chapter, one hundred and four.

**SECT. 4.** Every keeper of a ferry, shall keep a safe boat, or boats, in good repair, suitable to the waters, where they are to be used; and give ready and due attendance on passengers, on all occasions, according to the regulations, established for his ferry.

**SECT. 5.** The keeper of every such ferry, for every neglect of keeping a boat or boats, according to such regulations, shall forfeit twenty dollars, and, for every neglect of such attendance, he shall forfeit one dollar, to him, who shall sue therefor, in an action of debt. He shall, in each case, be further liable, in an action on the case, to the party-injured, to the amount of his damages.

**SECT. 6.** Whenever the commissioners of any county shall judge it necessary, to establish a ferry, and no person shall appear, to keep the same for the stated profits thereof, the town or towns, where such ferry may be, shall provide one or more suitable persons to keep, and to attend the same, at such place, and in such times of the year, as the said commissioners shall order; which persons shall be licensed, as aforesaid. The expense of maintaining such ferry, beyond the amount received for tolls, shall be paid by such town or towns.

**SECT. 7.** When such ferry shall be established, as mentioned in the preceding section, between two towns, they shall maintain the same, either jointly, or alternately, and in such proportions, as the commissioners shall order.

**SECT. 8.** Any town, neglecting to maintain such ferry, or their proportion of the same, as provided in the two preceding sections, shall forfeit for each month's neglect, forty dollars.

**SECT. 9.** If any person shall keep a ferry, contrary to the provisions of the first section of this chapter, or shall transport passengers over or across any stated ferry, and demand or receive pay therefor, he shall forfeit, for each day he shall keep such ferry, or for each time, he shall transport passengers, as aforesaid, the sum of four dollars; and shall be further liable, in a special action on the case, to pay such damages, as shall accrue thereby, to the person authorized to keep any such ferry, at or near the place, where the offence is committed.

**SECT. 10.** At the several ferries in this state, where the tide ebbs and flows, and the waters, at times, may be so frozen, as to

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grant licenses,  
and establish  
tolls.  
1821, 176, § 1, 4.

Ferryman liable for damages,  
through their  
default.

Ferryman to  
keep a good  
boat and attend.  
1821, 176, § 2.

Penalties for  
neglect.  
1821, 176, § 2.

Towns to pro-  
vide ferrymen,  
if commission-  
ers require.  
1821, 176, § 4.

Ferries be-  
tween towns,  
to be provided at  
their joint ex-  
pense.  
1821, 176, § 5.

Forfeiture, if a  
town neglect.  
1821, 176, § 6.

Penalty for  
keeping a ferry,  
without license.  
1821, 176, § 3.

Ferryman to  
level ice, and  
repair passage

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ways, in winter.  
1825, 292, § 1.  
1839, 410, § 1, 2.

admit a passage for travelers over the ice, it shall be the duty of the keepers of such ferries, so to level the ice, and clear, repair and amend the passage way, to and over the same, from day to day, as that the same may be, at all such times, safe and convenient for travelers, with their teams, sleds and sleighs, at the proper charge and expense of the county, in which such ferry may be: or such passage way may be made from any public landing, which may be sufficiently near to be conveniently connected with the opposite ferry landing.

Condition of ferryman's bond.  
1825, 292, § 2.  
1839, 410, § 2.

SECT. 11. In the bond, taken pursuant to the provisions of the second section of this chapter, the county commissioners shall further provide for the faithful performance of the duties, required by the section preceding; and the commissioners shall order a meet compensation for such services, when performed, from the treasury of the county; or the commissioners may, if they judge it expedient, contract with some other person, to perform the duties, provided in the preceding section; in which case, they shall give notice to the ferryman, before the closing of the river; and after such notice, and during the continuance of such contract, the duties and liabilities of such ferryman, in relation to such passage way, shall be transferred to the person, with whom the contract is made.

Forfeiture for neglect to repair passage way.  
1825, 292, § 2.  
1839, 410, § 2.

SECT. 12. Every such ferryman, or other person, contracted with, as provided in the preceding section, as the case may be, for each day's neglect of the duties, required by the tenth section of this chapter, shall forfeit ten dollars; and shall be further liable to pay, in an action on the case, all such special damages, as any person shall sustain by such neglect.

Prohibition of horse or steam ferries.  
1830, 457, § 1.

SECT. 13. No person, keeping a ferry under a license as aforesaid, shall, by virtue of such license, use, employ or put in operation, at such ferry, any boat, propelled or worked by steam, horse, or team power, under penalty of forfeiture of his license, and to be further liable to pay such damages, as may accrue thereby, to any person or corporation. Provided, that this prohibition shall not apply to any such ferryman, who had built, purchased, or had in operation any such steam, horse, or team boat, at his ferry, on the sixth day of March, in the year eighteen hundred and thirty.

Exceptions.

Persons, authorized to use horse or steam ferries, may use other boats.  
1830, 457, § 2.

SECT. 14. Any person or corporation, by law authorized and required to keep, use and employ horse, steam or team boats, at any ferry, may, notwithstanding the requirements of their license, in the night, or at any other time, when the passage of such ferry would be dangerous for said boats, use any other kind of boats, that shall be safe and convenient, for the transportation of passengers, and whatever else, he or they may be liable to transport.

Penalties for obstructing ferries.  
1835, 66, § 1, 2, 4.  
1840, 26.

SECT. 15. No person, except whilst necessarily obliged in the night time, or by stress of weather, shall anchor, moor, or deposit any vessel, boat, raft or water craft in any river, at a place where there is a ferry, authorized by law; nor at any time shall place any weir or other obstacle, in such manner as to obstruct the passage of the ferry boat, in its ordinary routes; under penalty of forfeiting twenty dollars, to the use of the proprietors of the ferry, if the offence be committed wilfully, or if the offence be committed inadvertently, and the person, committing the same, shall neglect

or refuse to remove such vessel, boat, raft, water craft, or other obstruction within thirty minutes, if practicable, after notice of the improper position of the same, to be recovered in a special action on the case.

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SECT. 16. No person shall be liable to the penalty of the preceding section, for anchoring his vessel, boat, or raft, for the purpose of hauling into any wharf, pier, landing or dock, if he shall not be guilty of unreasonable hindrance to the business of the ferry, by delay or wilful mismanagement in so doing.

Exception to this liability. 1833, 66, § 2.

SECT. 17. The proprietors of any ferry may sink one or more piers, near their ferry ways, either above or below the same, on either side of the river, for the purpose of steadying or guiding their boats, in times of high winds or freshets; provided that no such pier shall be of greater length, or breadth, than twelve feet, nor so sunk, as to injure the proprietors of any wharf, pier, or landing, at which vessels may previously have taken in, or discharged, their freights.

Proprietors of ferries may sink piers. 1833, 66, § 3.

SECT. 18. Any forfeiture, mentioned in this chapter, not otherwise appropriated, shall accrue to the use of the state; and may be recovered by indictment, in the district court in the county, where the same may have been incurred.

Mode of recovering forfeitures. 1833, 66, § 2.

## CHAPTER 28.



### OF WORK HOUSES.

SECT. 1. Towns may provide work houses.

- Persons liable to commitment.
2. Towns may choose overseers of such houses.
3. Duties of such overseers.
4. Contiguous towns may unite, in building work houses.
5. Joint board of overseers, and their powers in such case.
6. How chosen, and mode of proceeding.
7. Quarterly and other meetings of such board.
8. Choice of officers.
9. By laws, when and how made.
10. Duties and proceedings.
11. Proportion in which expenses are to be paid.
12. Mode of recovery from delinquent town.

SECT. 13. Overseers may order commitment of certain persons.

14. Neither town may commit more than its proportion.
15. Idlers having no settlement may be committed.
16. Delinquent town may be deprived of the right to occupy the house.
17. Either town may furnish additional materials for labor.
18. Master to keep a registry.
19. Controversy between master and overseers, how determined.
20. Each town liable for its own commitments. Mode of discharge.
21. Persons committed, to be kept employed.
22. Work houses may be discontinued.
23. Certain special laws, not affected by this chapter.

SECTION 1. Any town may erect or provide a work house, for the employment and support of persons of the following description, that is to say: all poor and indigent persons, that are maintained by, or receive alms from, the town; all persons, who, being able of body, and not having estate or means, otherwise, to maintain them-

Towns may provide work houses. Persons liable to commitment. 1821, 124, § 1, 7.



**CHAP. 28.** selves, refuse or neglect to work ; all persons, who live a dissolute and vagrant life, and exercise no ordinary calling, or lawful business, sufficient to gain an honest livelihood ; and all such persons, as spend their time and property in public houses, to the neglect of their proper business, or, by otherwise misspending what they earn, to the impoverishment of themselves and their families, are likely to become paupers.

Towns may choose overseers of such houses. 1821, 124, § 1.

**SECT. 2.** Every town, having a work house, may, at its annual meeting, choose three, five, seven or more overseers of such work house, who shall have the inspection and government thereof, with power to appoint a master and needful assistants, for the more immediate care and superintendence of the persons received, or employed therein.

Duties of such overseers. 1821, 124, § 1.

**SECT. 3.** The said overseers, as occasion shall require, shall hold meetings, on the business of their office. At their meetings they may make needful orders and regulations for such house, to be binding until the next town meeting, when the same shall be submitted to the consideration of the inhabitants ; and such as shall be approved, at said meeting, shall remain in force, until revoked by the town.

Contiguous towns may unite, in building work houses. 1821, 124, § 2.

**SECT. 4.** Any two or more contiguous towns, that shall so agree, may, at their joint charge, and for their common benefit, erect or provide a work house for the purposes before mentioned in this chapter, and may purchase land for the use of such house.

Joint board of overseers, and their powers in such case. 1821, 124, § 2.

**SECT. 5.** The ordering, governing and repairing of any work house, erected or provided at the joint expense of two or more towns, and the appointing a master and necessary assistants, and the removing them from office, for sufficient cause, shall be vested in a joint board of overseers, to be chosen, as provided in the next section.

How chosen, and mode of proceeding. 1821, 124, § 2.

**SECT. 6.** Each of said towns, at their annual meeting, shall choose three members of said board, unless all said towns shall agree on a different number. Vacancies in said board may be supplied by the town, in which it happens, at any legal meeting. The members, appointed by any one or more of said towns, shall have power to proceed, in all affairs of said house, notwithstanding any one or more of the towns interested shall have neglected to furnish their proportion of members.

Quarterly and other meetings of such board. 1821, 124, § 3.

**SECT. 7.** There shall be stated quarterly meetings of all the said overseers, on the first Tuesday of January, April, July and October, to be held at the work house, in order to inspect the management, and direct the business thereof. Besides the quarterly stated meetings, other meetings, to be held at the work house, may be called by the overseers of any town concerned ; they giving notice of the time and occasion thereof to the other members of said board, in such manner, as shall have been agreed upon at any stated meeting thereof.

Choice of officers. 1821, 124, § 3.

**SECT. 8.** The said joint board of overseers, when duly assembled, may choose a moderator. At their first general meeting, after their election, they shall appoint a clerk ; who shall be duly sworn, and shall record all votes and orders of the said board.

By laws, when

**SECT. 9.** The said joint board of overseers, at any general

quarterly meeting, composed, at least, of one half of their whole number, may make all reasonable by laws and orders, not repugnant to the laws of the state, respecting the affairs of the work house under their charge. CHAP. 28.  
and how made.  
1821, 124, § 4.

SECT. 10. The said joint board of overseers may also, at any such meeting, agree with the master and assistants, and order meet allowance for their care and services; but all other matters, relating to said work house, may be acted upon at any other meeting, duly notified, if one third part of said board are present. Duties and proceedings.  
1821, 124, § 4.

SECT. 11. The yearly compensation of the master and assistants, in any work house jointly provided as aforesaid, in addition to the allowance provided in this chapter, and the expense of keeping the house in repair, shall be paid by the several towns interested, in proportion to the state tax, last assessed upon them, when the expense may have been incurred; or in such other proportion, as all the towns interested shall agree upon. Proportion, in which expenses are to be paid.  
1821, 124, § 5.

SECT. 12. If any town shall refuse or neglect to advance, or reimburse, its proportion of such allowance, or other charges mentioned in this chapter, after they shall have been stated, and adjusted by the joint board of overseers, the same may be recovered of such delinquent town, in an action to be brought in the name of any person or persons, whom the overseers shall, in writing, appoint for that purpose. Mode of recovery from delinquent town.  
1821, 124, § 5.

SECT. 13. Any two or more overseers, in any town, having a work house, either in severalty, or in conjunction with other towns, may, by order under their hands, commit to such house, subject to the regulations thereof, any person residing in their town, who is declared in this chapter, to be liable to be sent there. Such order for commitment, directed to any constable of the same town, may be served by the same constable. Overseers may order commitment of certain persons.  
1821, 124, § 6.  
2 Fairf. 208.

SECT. 14. No greater number of persons, belonging to any town, shall be received into a work house, jointly provided as aforesaid, than such town's proportion of such house, allotted them, can accommodate, when the receiving of them will exclude or incommode such, as belong to other towns interested. Neither town may commit more than its proportion.  
1821, 124, § 6.

SECT. 15. When any person, not having a legal settlement in any town in this state, shall become idle or indigent, he may be committed to the work house provided for the use of said town, to be employed, if able to labor, in the same manner, and subject to the same rules, as the other persons there committed. Idlers having no settlement may be committed.  
1821, 124, § 8.

SECT. 16. If any town, jointly interested in any work house, shall refuse or neglect to provide its proportion of the necessary expenses of such house, or of the materials, implements or other means for carrying on the work, there required, according to their agreement, or as shall be duly directed by the overseers, such town shall be deprived of the privilege of sending any person thither, until it shall comply with such agreement or direction. Delinquent town may be deprived of the right to occupy the house.  
1821, 124, § 9.

SECT. 17. In addition to the proportion of the expenses and other things, mentioned in the preceding section, to be furnished jointly, each of such towns may furnish such other materials, and implements, and means of work, as the overseers of such town shall determine, for the employment of any person by them com- Either town may furnish additional materials for labor  
1821, 124, § 10.

**CHAP. 28.** mitted to such house ; and the master of the house shall receive such materials, implements and means of work, and keep them separate from those of other towns ; and shall be accountable to any such town for the prime cost, and all profits and earnings, made by the labor of those persons, under his care, belonging to such town.

Master to keep a registry. 1821, 124, § 10.

**SECT. 18.** The master of such work house shall keep a register of the names of the persons committed, and of the towns, to which they belong, with the time of their being received into, and discharged therefrom, and of their earnings ; and the same shall be open to the inspection of the overseers, on request.

Controversy between master and overseers, how determined. 1821, 124, § 10.

**SECT. 19.** All controversies between the master of such house and the overseers of any town, relating to his official transactions, may be determined by the overseers of the house, at a general or quarterly meeting.

Each town liable for its own commitments. Mode of discharge. 1821, 124, § 11.

**SECT. 20.** No town shall be chargeable for the expenses of any person, committed to said house, who was not sent thither by overseers, belonging to such town ; nor shall any person, duly committed to such house, be discharged therefrom, except by written order of the overseers of his town, or by vote of the board of overseers of said house, at a quarterly meeting, or by the district court, held in the same county, upon application for that purpose.

Persons committed, to be kept employed. 1821, 124, § 11.

**SECT. 21.** Every person, duly committed to such work house, if able to work, shall be kept diligently employed, during the term of his commitment. For idleness, obstinacy or disorderly conduct, he shall be liable to such punishment, as may be provided for, by the standing regulations of the house, authorized in this chapter, and not repugnant to the laws of the state.

Work houses may be discontinued. 1821, 124, § 13.

**SECT. 22.** Any work house, erected, or provided as aforesaid, may be discontinued, or applied to any other use, whenever the town or towns concerned shall find that their circumstances require it, and shall agree thus to do.

Certain special laws, not affected by this chapter.

**SECT. 23.** Nothing, contained in this chapter, shall be construed to affect any powers and privileges, heretofore granted to any towns, or the overseers of the poor thereof, by any act specially relating to work houses, erected in such towns.

## CHAPTER 29.

### OF FENCES AND COMMON FIELDS.

**SECT. 1.** What are legal fences.

2. To be maintained equally by adjoining occupants.

3. If either party neglect, proceedings of fence viewers, on application.

4. Complainant may recover double compensation, in certain cases.

5. Proceedings for division of partition fences.

**SECT. 6.** Each party bound to build the part, assigned to him.

7. To be kept in repair.

8. Fences may vary from the dividing line, in certain cases.

9. Assignment of parts, before fence is built.

10. Occupant ceasing to improve, not to remove his fence, in case the other will purchase.

SECT. 11. Liability of owner, beginning to improve land lying in common.

12. If fence be on town line, how divided.
13. Division of fences, when binding.
14. Provisions not applicable to house lots, nor agreements.
15. Inclosure of lots, lying together, by a general fence.
16. Manner of calling meetings of proprietors.
17. How notice is to be given.
18. How they may vote.
19. May raise and assess moneys. Abatements.
20. Choice of officers.
21. Clerk to issue warrant, to collect moneys.
22. Apportionment of the general fence.
23. Proprietors not liable, who do not occupy their lots.
24. Apportionment of expenses, according to interest.
25. Manner of repairing fences of delinquents.
26. Delinquent liable for double the expense.

SECT. 27. Proceedings, if any part be suddenly destroyed.

28. Choice of field drivers, and their powers.
29. No proprietor to put in stock contrary to regulations. Penalty.
30. Remedy, if a proprietor be injured by beasts of a stranger.
31. Lines between proprietors, to be run once in two years.
32. Association may be discontinued.
33. Certain proprietaries not subject to these regulations.
34. Waste portions of lots, excluded from estimates and assessments.
35. Proceedings, on application of three or more, to be set off.
36. Proceedings, for organizing to inclose a common field.
37. After establishment of a common field, proprietors to proceed, as provided in this chapter.
38. Penalty, if fence viewers neglect their duty.
39. Fees for services. Penalty for neglect of payment.

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SECTION 1. All fences, four feet high and in good repair, consisting of rails, timber, boards, or stone walls, and brooks, rivers, ponds, creeks, ditches, and hedges, or other things, which, in judgment of the fence viewers, having jurisdiction thereof, are equivalent thereto, shall be accounted legal and sufficient fences.

What are legal fences.  
1821, 44, § 2.

SECT. 2. The respective occupants of lands, inclosed with fences, shall maintain partition fences, between their own and the next adjoining inclosures, in equal shares, so long as both parties continue to improve the same.

To be maintained equally by adjoining occupants.  
1821, 44, § 2.

SECT. 3. In case any party shall neglect or refuse to repair, or rebuild any such fence, which, of right, he ought to maintain, the aggrieved party may complain to two or more fence viewers of the town, where the land is situated, who, after due notice to such party, shall proceed to survey the same; and if they shall determine, that the fence is insufficient, they shall signify the same, in writing, to the delinquent occupant of the land, and direct him to repair or rebuild the same, within such time, as they shall judge reasonable, not exceeding six days. If the fence shall not be repaired, or rebuilt, accordingly, it shall be lawful for the complainant to make, or repair such fence.

If either party neglect, proceedings of fence viewers, on application.  
1821, 44, § 2.  
8 Greenl. 81.  
13 Maine, 371.  
15 Pick. 123.

SECT. 4. When the complainant shall have completed such fence, and the same shall have been adjudged sufficient, by two or more of the fence viewers, and the value thereof, together with the fence viewers' fees, certified under their hands, he may demand and recover, either of the occupant, or owner, of the land, where the fence was deficient as aforesaid, at his election, double the value and fees, thus ascertained; and in case of neglect or refusal to pay the same, for one month after demand, the complainant may sue

Complainant may recover double compensation, in certain cases.  
1821, 44, § 2.

**CHAP. 29.** for and recover the same, by a special action on the case, with interest, at the rate of one per cent. a month.

Proceedings for division of partition fences. 1821, 44, § 3. 5 Greenl. 356. 8 Greenl. 81.

**SECT. 5.** When the occupants or owners of adjacent lands disagree, respecting their rights in partition fences, and their obligations to maintain the same, on application of either party to two or more fence viewers of the town, where the lands lie, said fence viewers, after reasonable notice to each party, may, in writing under their hands, assign to each party, his share thereof, and limit the time, in which each party shall build or repair his part of the fence, not exceeding six days, as provided in the third section of this chapter. Such assignment, and all other assignments of proprietors of partition fences, provided for in this chapter, being recorded in the town clerk's office, shall be binding upon the parties, and all who may afterwards occupy the lands; and they shall be obliged, always thereafter, to maintain their part of said fence. If such fence shall have been already built and maintained by the parties, in unequal proportions, and the fence viewers shall adjudge the same to be good and sufficient, they may, after notice as aforesaid, in writing under their hands, award to the party, who may have built and maintained the larger portion, the value of such excess, to be recovered in an action on the case against the other party, if not paid within six months after demand.

Each party bound to build the part, assigned to him. 1821, 44, § 3.

**SECT. 6.** In case any of the parties shall refuse or neglect to build and maintain the part, thus assigned them, the same may be done by the aggrieved party in the manner, before provided in this chapter; and he shall be entitled to double the value, and expenses, ascertained and to be recovered in like manner, as aforesaid.

To be kept in repair. 1821, 44, § 3.

**SECT. 7.** All division fences shall be kept in good repair, throughout the year, unless the occupiers of the adjacent lands shall otherwise agree.

Fences may vary from the dividing line, in certain cases. 1821, 44, § 4.

**SECT. 8.** When from natural impediments, in the opinion of the fence viewers, having jurisdiction of the case, it may be impracticable, or unreasonably expensive, to build a fence on the true line between the adjacent lands, if the occupants disagree, respecting the position of their partition fence, then, said fence viewers, on application of either party, as provided in the fifth section of this chapter, and after notice to both parties, and on view of the premises, may determine by a certificate under their hands, communicated to each party, on which side of the true line, and at what distance, or whether partly on one side, and partly on the other, and at what distances, as they shall see cause, the fence shall be built and maintained, and in what proportions, under all the circumstances of the case, by the respective parties; and either party may have the same remedy against the other, as is herein before provided, in regard to assignments of partition fences, made by fence viewers.

Assignment of parts, before fence is built. 1821, 44, § 5, 7.

**SECT. 9.** When adjacent lands have been occupied in common, without a partition fence, and either party desires to occupy his own in severalty, or when a fence, running into the water, is necessary to be made, and the parties liable to build and maintain the same disagree, either party may have the line divided on application to the fence viewers of the town; who shall proceed in like manner, as is provided for the disagreement, mentioned in the fifth section

of this chapter; excepting, that the fence viewers may allow a longer time than six days for building the fence, if they think proper, having regard to the season of the year. In other respects the remedy, for the aggrieved party, shall be the same, as is provided in the case aforesaid.

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**SECT. 10.** When one party shall cease to improve his land, or shall lay open his inclosure, he shall not take away any part of the partition fence, belonging to him, and adjoining to the next inclosure improved, provided the owner or occupant thereof will allow, and pay therefor, so much, as two or more fence viewers shall, on due notice to both parties, determine to be the reasonable value of such part of the fence.

Occupant ceasing to improve, not to remove his fence, in case the other will purchase. 1821, 44, § 6. 11 Mass. 293.

**SECT. 11.** Whenever any land, which has lain uninclosed, shall be afterwards inclosed, or shall be used for pasturing, the occupant or owner thereof shall pay for one half of each partition fence, standing upon the line, between his land and the inclosures of any other occupant, or owner, the value thereof, to be ascertained in writing, in case they shall not agree between themselves, by two or more of the fence viewers of the same town, wherein such partition fence stands; and in case such occupant or owner, after the value has been so ascertained by the fence viewers, on notice to him, shall neglect or refuse, for thirty days after demand made, to pay for one half of the partition fence, the proprietor of the fence may maintain, in form aforesaid, an action for such value, and the costs of ascertaining the same.

Liability of owner, beginning to improve land lying in common. 1821, 44, § 6.

**SECT. 12.** In all cases, where the line, upon which a partition fence is to be made, or to be divided, is the boundary line between two or more towns, or partly in one town, and partly in another town, a fence viewer shall be taken from each town.

If fence be on town line, how divided. 1821, 44, § 6.

**SECT. 13.** In all cases, where a division of fence, between the owners of improved lands, has been or shall be made, either by fence viewers, or by the written agreement of the parties, recorded in the office of the clerk of the town, where such lands are situate, the several owners of such lands, and their heirs and assigns, forever, shall erect and support such fences, agreeably to such division; provided, that if any person shall lay his lands common, and determine, not to improve any part of the same, adjoining the fence, divided as aforesaid, and shall give six months notice to all occupants of adjoining lands, he shall not be required to maintain such fence, during the time his lands shall so lie common and unimproved.

Division of fences, when binding. 1821, 44, § 3.

**SECT. 14.** Nothing, in this chapter contained, shall extend to house lots, the contents of which do not exceed half an acre; but if the owner of such lot improve the same, the owner of the adjacent land shall be compellable to make and maintain one half of the fence between them, whether he improve or not; nor shall the provisions of this chapter make void any written agreement, made or to be made respecting public fences.

Provisions not applicable to house lots, nor agreements. 1821, 44, § 7. 2 Greenl. 72.

**SECT. 15.** When several distinct lots or pieces of land are inclosed and fenced, in one common field, or when all the proprietors of such land shall agree to inclose them in that manner, the said proprietors may hold regular meetings, at such times as they

Inclosure of lots, lying together, by a general fence. 1821, 44, § 9, 12.

**CHAP. 29.** shall judge proper, make such rules for managing their common concerns, and adopt such equitable modes of improvement, as their common interest may require ; but in all other respects, each proprietor may, at his own expense, inclose, or manage and improve his own land, as he shall think best ; but he shall, nevertheless, maintain his proportion of fence inclosing the general field.

Manner of calling meetings of proprietors.  
1821, 44, § 13.

**SECT. 16.** Upon the application of any two or more of the said proprietors, to any justice of the peace for the county, where such land lies, he shall issue his warrant to one of the applicants, or to the clerk of the proprietors ; requiring him to call a meeting of the proprietors, and expressing in the warrant, the time, place and purpose of the meeting.

How notice is to be given.  
1821, 44, § 13.

**SECT. 17.** Notice of the meeting shall be served, at least fourteen days previous to the time appointed, when all the proprietors reside in the town or plantation where the land lies, by reading the warrant to each proprietor, or giving to him in hand, or by leaving a copy at his usual place of abode, if the proprietors of said land have not been previously organized for the aforesaid purpose, or if no other mode of notice has been fixed by their standing rules ; and, in such case, should one or more of the proprietors reside without the town or plantation, notice shall be given to such person by publishing a copy of said warrant in some newspaper, printed in the county, or in the newspaper, published by the printer to the state, three weeks successively, the last publication to be, at least, fourteen days before the time appointed. When the standing rules of the proprietors determine the mode of serving notices for their meetings, that mode may be observed in service of said warrant, at the election of the party serving the same.

How they may vote.  
1821, 44, § 21.

**SECT. 18.** At all meetings of the said proprietors, each one may vote, according to the relative amount or value of his interest, when known ; when not known, they shall all vote equally, and absent proprietors may vote by proxy, authorized in writing.

May raise and assess moneys. Abatements.  
1821, 44, § 14.

**SECT. 19.** The proprietors may raise money, from time to time, for defraying their common charges, and for managing their affairs ; which money shall be assessed upon the several proprietors, in proportion to their respective interests, by the assessors hereinafter provided for. Any person, aggrieved by such assessment, may apply to the county commissioners, who may abate his part of the same, in whole or in part, if they see cause.

Choice of officers.  
1821, 44, § 14.

**SECT. 20.** The said proprietors may, from time to time, at their annual, or other meeting duly notified, choose a clerk, three or five assessors, a collector, and such other officers as they shall find necessary ; all of whom shall continue in office, until removed by the proprietors, or until others are chosen and qualified in their stead. The clerk and assessors shall be sworn to the faithful discharge of their duty.

Clerk to issue warrant, to collect moneys.  
1821, 44, § 14.

**SECT. 21.** The clerk of the proprietors shall issue his warrant to the collector, requiring him to collect all sums so assessed, and to pay over the same to the clerk, or other proper officer, according to the orders of the proprietors ; and the collector shall collect the said sums in the same manner, as collectors of towns are authorized to collect town taxes.

**SECT. 22.** The whole fence, inclosing such general field, shall, so far as it may be found convenient, be apportioned amongst the proprietors, according to the number of acres held and cultivated, or otherwise used, by each one; and the part, to be maintained by each proprietor, shall be set out and assigned to him, by any two or more fence viewers of the town, unless the proprietors shall agree on an apportionment of the fence, among themselves. In all cases, the proportion of fence, so assigned to each proprietor, shall be recorded by the clerk, in the books of the proprietors; and where there is no such clerk, by the clerk of the town on the town records.

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Apportionment of the general fence. 1821, 44, § 9.

**SECT. 23.** If any proprietor of land, in such general field, shall decline to cultivate his land, or to use it for pasturing, and shall give written notice of his intention to the clerk of the proprietors, he shall not be required to maintain any part of the fence, nor to pay any tax or assessment on account of his land, so long as he shall neglect to cultivate, or use it, as aforesaid.

Proprietors not liable, who do not occupy their lots.

**SECT. 24.** The expense of apportioning the fence, and also for making and maintaining such part thereof, as cannot conveniently and justly be assigned to any one proprietor, shall be borne by all the proprietors who are liable to be taxed, in proportion to their respective interests; and the part, assigned to each proprietor, shall be made and maintained by himself, so long as he shall use his part of the said general field for pasturing, planting, mowing or otherwise.

Apportionment of expenses, according to interest. 1821, 44, § 9.

**SECT. 25.** If any part of the fence, assigned to any of the proprietors, shall become deficient, and, if he shall not repair it within three days after notice of such deficiency, given to him or his tenant, by a fence viewer of the town, it may be repaired by any other of the said proprietors; and such repairs may be examined by any two or more fence viewers, and if adjudged by them to be sufficient, they shall ascertain the cost of the repairs, and make a statement thereof, and of the amount of their fees, in writing under their hands.

Manner of repairing fences of delinquents. 1821, 44, § 10.

**SECT. 26.** The person, making such repairs, may demand of the proprietor, who was bound to make the same, or of his tenant, double the costs of the repairs and the fees aforesaid, thus ascertained; and if the same be not paid, within one month after notice and demand thereof, he may recover the same, in an action on the case.

Delinquent liable for double the expense. 1821, 44, § 10.

**SECT. 27.** If any part of the fence shall be suddenly blown down, or carried away by any flood or tempest, at a time, when the crops in the field shall be thereby exposed to immediate destruction or injury, the proprietor, to whom that part of the fence was assigned, shall be bound to repair the same, within twenty four hours after notice thereof, given him by a fence viewer. If he shall fail so to do, the fence may be repaired by any other proprietor; and such proprietor may recover double the costs of the repairs and fees, in the same manner, as is provided in the preceding section.

Proceedings, if any part be suddenly destroyed. 1821, 44, § 11.

**SECT. 28.** The proprietors may choose one or more field drivers, who shall have and exercise the same powers, with respect to the general fields, as are exercised by field drivers, chosen by a town.

Choice of field drivers, and their powers. 1821, 44, § 15.

**SECT. 29.** If any proprietor shall put into the general field, any horses, cattle or other beasts, contrary to the regulations of the pro-

No proprietor to put in stock, contrary to reg-



**CHAP. 29.**

Regulations. Pen-  
alty.  
1821, 41, § 16.

Remedy, if a  
proprietor be in-  
jured by beasts  
of a stranger.  
1821, 41, § 17.

Lines between  
proprietors, to  
be run once in  
two years.  
1821, 41, § 18.

Association  
may be discon-  
tinued.  
1821, 41, § 19.

Certain proprie-  
taries not sub-  
ject to these  
regulations.  
1821, 41, § 20.

Waste portions  
of lots, exclud-  
ed from esti-  
mates and as-  
sessments.  
1821, 41, § 23.

Proceedings,  
on application  
of three or  
more, to be set  
off.  
1821, 41, § 24.

proprietors, either by putting in more than the number allotted him, or before the day fixed for that purpose, or by keeping them therein longer than the time limited, he shall be considered a trespasser; and his beasts may be impounded, as taken doing damage, as if he owned no land in the general field.

**SECT. 30.** If any proprietor shall be injured in his lands, by the beasts of any stranger, he shall have the same remedy therefor, as if his land had been inclosed, and used separately. When damage happens to any proprietor in such common field, through the insufficiency of the fence of a co-proprietor, the owner or occupant of the land, to which such insufficient fence belongs, shall be liable to answer and make good all such damage.

**SECT. 31.** Every proprietor of land, lying unfenced in a general field, shall once in every two years, if requested by the owner of the adjoining land, run lines with such owner between their lots, and establish boundaries by sufficient mete stones, at their joint expense; and if he shall fail so to do, after at least six days notice by the adjoining owner, he shall forfeit two dollars, to be recovered by such adjoining owner to his own use, in an action on the case.

**SECT. 32.** A major part in interest, in any common or general field, occupied under the provisions of this chapter, at any legal meeting called for the purpose, may discontinue their association; said discontinuance not to take effect, until six months after the vote for that purpose, unless all the proprietors consent to some earlier period.

**SECT. 33.** Nothing, contained in this chapter, shall prevent the proprietors of any such common field fenced, [and] who had been duly organized, previously to February twenty fourth, eighteen hundred and twenty one, from making and maintaining their fences, according to rules and orders, before that date agreed on by them, at any legal meeting.

**SECT. 34.** Portions of common fields, inclosed under the provisions of this chapter, which are unoccupied and unimproved by their owners, on account of their being rocky or barren, shall be excluded in all estimates for assessments under section, nineteen, or for apportionments of fence, under section, twenty two, of this chapter.

**SECT. 35.** Any three or more proprietors of lots in a general field, lying within one general fence or inclosure, may, by a petition in writing to the proprietors of such field, at any meeting of said proprietors, legally warned for that purpose, request to have their said lots, either alone, or jointly with any other lots in said field, divided from the remainder of the field, in order to be inclosed in one common fence, and to be occupied by them as an entire field, separately from the other proprietors of the general field; and, if the majority of the proprietors, in interest, who may be present at such meeting, shall withhold, or refuse their assent to such division, the county commissioners may, upon the like application, appoint three or five disinterested and suitable persons, within the county, where such general field is situated, to be a committee, to make such division thereof, if the said committee shall deem it expedient; and to assign to each field, its proportion of the partition fence,

which shall become necessary by reason of such division, to be kept up and maintained by the proprietors of said general fields, respectively: and the said committee shall, as soon as may be after their appointment, make return of their doings under their hands to the said county commissioners; and, after the acceptance thereof by said commissioners, the fields, so divided, shall be deemed separate general fields, and the proprietors of the field, so set off, and the remaining proprietors of the original, respectively, shall be distinct and separate proprietary bodies; having all the like powers and privileges, and subject to all the duties and liabilities, as the proprietors of [the] original general field, before such division was made; provided, that no order for such division shall be made, nor any committee appointed, as aforesaid, until the other proprietors shall have had notice of the petition for such division; which notice shall be given by serving the clerk of the proprietors with a copy of the petition, thirty days at least, before such order or appointment shall be made.

SECT. 36. When the major part, in interest, of the proprietors of any tract of land, consisting of five or more allotments, shall be desirous of inclosing them, in one general field, they may apply to the district court in the county, where such land lies, and when such land lies in different counties, then to the supreme judicial court, to be holden in either; and said court may order such notice to all parties interested, as they may deem reasonable, and after hearing the parties who may appear, may, if they see cause, order the land to be so inclosed.

Proceedings, for organizing to inclose a common field. 1821, 44, § 25.

SECT. 37. After a common or general field shall be so established by order of court, the further proceedings, in relation thereto, shall be the same, as are provided, when a field is so inclosed by the consent of all the proprietors; and the proprietors shall be entitled to all the privileges, and subject to all the duties, before provided in this chapter, with respect to the proprietors of fields, inclosed by consent.

After establishment of a common field, proprietors to proceed, as provided in this chapter. 1821, 44, § 25.

SECT. 38. Any fence viewer, who shall, when requested, unreasonably neglect to view any fence, or to perform any other duties, required of him in this chapter, shall forfeit three dollars to any person, who shall sue for the same, within forty days after such neglect. He shall also be liable for all damages, to the party injured.

Penalty, if fence viewers neglect their duty. 1821, 44, § 8.

SECT. 39. Each fence viewer shall be paid, by the person employing him, at the rate of one dollar a day, for the time he shall be so employed. If the party liable shall neglect to pay the same, for thirty days after demand, each of such fence viewers shall be entitled to recover double the amount, in an action on the case: and they may be mutually witnesses for or against each other.

Fees for services. Penalty for neglect of payment. 1821, 44, § 8.

## CHAPTER 30.

## OF POUNDS AND IMPOUNDING BEASTS.

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| <p>SECT. 1. Each town to keep a pound.</p> <p>2. Penalty for neglect.</p> <p>3. Penalty for beasts going at large. May be impounded.</p> <p>4. Penalty for ungelded horses and rams, going at large.</p> <p>5. Towns may permit beasts to go at large.</p> <p>6. Persons, injured by beasts, may sue for damages or distrain.</p> <p>7. Pound keepers.</p> <p>8. To keep a book of records.</p> <p>9. To restrain beasts impounded.</p> <p>10. Impounder, to furnish a certificate of the cause of impounding.</p> <p>11. Pound keeper, not to deliver beasts, till damages and costs are paid.</p> <p>12. Proceedings, if claimant object to amount demanded.</p> <p>13. Proceedings, when beasts are taken up as estrays.</p> | <p>SECT. 14. Penalty for not delivering estray to pound keeper.</p> <p>15. Pound keeper to advertise.</p> <p>16. When pound keeper may libel the estray.</p> <p>17. Court may decree a sale.</p> <p>18. Disposal of proceeds of sale.</p> <p>19. Owner may redeem, at any time before decree.</p> <p>20, 21. Replevin of beasts impounded.</p> <p>22. Rescue, and punishment thereof.</p> <p>23. Pound breach, and punishment thereof.</p> <p>24. Masters and parents, liable for minors.</p> <p>25. Restriction as to defence, in such cases.</p> <p>26. Limitation of actions for forfeitures.</p> <p>27. Pound keeper's fees.</p> <p>28. Compensation to impounder.</p> <p>29. Expense of keeping beasts impounded.</p> |
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Each town to keep a pound. 1834, 137, § 1.

Penalty for neglect. 1834, 137, § 1.

Penalty for beasts going at large. May be impounded. 1834, 137, § 2.

Penalty for ungelded horses and rams, going at large. 1834, 137, § 2.

Towns may permit beasts to go at large. 1834, 137, § 2.

SECTION 1. Each town shall constantly keep and maintain, in such places therein, as the inhabitants thereof shall direct, one or more sufficient pounds for the reception of such beasts, as may be, by law, liable to be impounded.

SECT. 2. Every town that shall neglect, for six months, to provide and maintain such pound, shall forfeit a sum, not less than fifty dollars; to be recovered by indictment before the district court, and to be expended by an agent, to be appointed by said court, for the use of said town, to build or maintain such pound or pounds.

SECT. 3. If any horse or horse kind, ass, mule, swine, goat, sheep, or neat beast, shall, at any time, be found going at large, without a keeper, in the highways, roads, town ways or commons of the town, the owner thereof shall forfeit seventy five cents for every horse, horse kind, ass or mule; twenty five cents for every swine, goat or neat beast; and ten cents for every sheep; recoverable by action of debt, as hereinafter provided: or the same beasts may be impounded in any pound of the town, till the forfeiture aforesaid, with the charges of impounding and keeping such beasts, and all fees, shall be paid by the owner or claimant.

SECT. 4. If such horse be an ungelded male, of one year old or upwards, the owner thereof shall forfeit a further sum of four dollars. If any ram or he goat shall be found going at large, in any place out of the owner's inclosure between the tenth day of August and the twentieth day of November, the owner thereof shall forfeit a further sum of five dollars.

SECT. 5. Any town, notwithstanding the provisions of the third and fourth sections of this chapter, may, by vote thereof at the annual meeting, permit cows, and any other particular description of neat beasts, to go at large within such town, or any specified part thereof, at any, or all times, within one year from the meeting.

**SECT. 6.** When any person is injured in his land, by sheep, swine, horses, asses, mules, goats or neat cattle, whether in a common or general field, or in a close by itself, he may recover his damages, in an action of trespass against the owner of the beasts, or by distraining the beasts, or any of them, doing the damage, and proceeding therewith, as hereinafter directed; provided, that if the beasts shall have been lawfully on the adjoining lands, and shall have escaped therefrom, in consequence of the neglect of the person, who had suffered the damage, to maintain his part of the partition fence, the owner of the beasts shall not be liable for such damage.

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Persons, injured by beasts, may sue for damages, or detain.  
 1821, 44, § 2.  
 1834, 137, § 3.  
 4 Mass. 471.  
 6 Mass. 90.  
 16 Mass. 33.  
 2 Greenl. 72, 408.  
 5 Greenl. 356.  
 14 Maine, 419.  
 15 Maine, 237.  
 18 Pick. 227, 422.  
 Pound keepers.  
 1834, 137, § 1.

**SECT. 7.** There shall be annually chosen, in every town, a suitable person, to keep each pound therein, and he shall be sworn to a faithful discharge of his trust.

**SECT. 8.** Said pound keeper shall keep a book, wherein he shall record, at length, the certificates, he shall receive from persons committing beasts to the pound, or finding stray beasts, and a single copy of all advertisements, by him posted, or published; and shall note therein the time, when a beast was impounded, and when, and by whom, the same was taken away; which book shall be legal evidence of the doings aforesaid, thus recorded and noted, and shall be transmitted to his successor in office.

To keep a book of records.  
 1834, 137, § 1.

**SECT. 9.** It shall be the duty of the pound keeper, to restrain the beasts impounded, in the town pound, or such other place, after the first day, as shall be more for the comfort of the beasts, or more convenient for their safety, and for giving them food and drink; which shall be furnished by him, at the expense of the impounder. Unless payment be made in advance, or sufficient security for the same tendered, the pound keeper shall not be obliged to receive such beasts into pound.

To restrain beasts impounded.  
 1834, 137, § 4.

**SECT. 10.** Before the pound keeper shall be required to receive any beast into pound, the impounder shall furnish the said pound keeper with a certificate, under his hand, briefly describing the beast, the cause of impounding, the amount of damages or forfeiture claimed, and charges of impounding, then accrued, of the following purport: "To the pound keeper of \_\_\_\_\_:

Impounder, to furnish a certificate of the cause of impounding.  
 1834, 137, § 5.  
 14 Maine, 419.  
 21 Pick. 187.

The undersigned A. B. of B. herewith commits to pound (a horse or cow, as the case may be, with a short description of the beast), taken up (in the highway or inclosure of said A. B. in B. as the case may be), and the said A. B. demands \_\_\_\_\_ dollars and \_\_\_\_\_ cents, for (damages, or forfeiture, as the case may be), and the unpaid charges for impounding the same.

Witness my hand, A. B.

B. (date) 18—."

**SECT. 11.** The pound keeper shall not be liable to any action, for receiving or detaining any beast, so committed, till the several sums, claimed by such certificate, and all other due expenses and costs and fees shall have been paid to him, except under the provisions of the next section.

Pound keeper, not to deliver beasts, till damages and costs are paid.  
 1834, 137, § 5.

**SECT. 12.** If the claimant of such beast object to the amount, stated as damages, or if no claimant appear, the pound keeper shall, within ten days, and not afterwards, issue a warrant under his hand to two disinterested persons of said county, to the following purport:

Proceedings, if claimant object to amount demanded.  
 1834, 137, § 5.  
 18 Pick. 422.

CHAP. 30. P. ss: To E. F. and G. H., two disinterested persons of said county:

Greeting:

You are hereby appointed to view and estimate, upon oath, according to your best judgment, the damages done to A. B. by the (horse, or oxen, as the case may be), owned or claimed by (C. D. or by owner unknown,) and make due return to me, within twenty four hours, with your doings therein; first giving the said A. B. reasonable notice of the time, when you will view the place, where the damages were done.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

O. P. Pound keeper.”

RETURN OF THE APPRAISERS.

“Pursuant to this warrant, we the undersigned, being first sworn to the faithful performance of the trust, to which we have been appointed, and having given said A. B. reasonable notice, as required, do hereby certify, that we have viewed and do estimate the said damages at \_\_\_\_\_ dollars and \_\_\_\_\_ cents and no more.

E. F. } Appraisers.  
G. H. }

B. (date) 18—.”

And said persons, being first sworn, shall give reasonable notice to the person impounding, and the owner of such beast, if known and resident in the same town, of the time appointed for the view, and proceed to estimate damages accordingly; and make return to the pound keeper of their doings, in writing under their hands. The oath may be administered, either by said pound keeper, or a justice of the peace, and must be certified on the same warrant.

Proceedings, when beasts are taken up as estrays.  
1834, 137, § 6.  
15 Maine, 237.  
4 Pick. 249, 256.

SECT. 13. Whoever shall take up in any public way or commons, or within his inclosure or possessions, any such beast, as before mentioned, as estrays, he shall within ten days, if no owner calls for the beast, commit the same to a pound keeper of the same town, with a certificate, as described in the tenth section of this chapter; which beast the pound keeper shall carefully keep, till called for by the owner, and all due charges paid, or until the beast shall be disposed of, as is hereinafter prescribed.

Penalty, for not delivering stray to pound keeper.  
1834, 137, § 6.

SECT. 14. If the possessor of such stray beast shall not deliver the same to a pound keeper, with a certificate as aforesaid, within said ten days, he shall for every week, after the ten days aforesaid, lose the expense of keeping, and forfeit one per cent. of the value of such stray beast, until he shall deliver the same to the pound keeper, with such certificate, or until such forfeiture shall amount to the value of the beast.

Pound keeper to advertise.  
1834, 137, § 7.

SECT. 15. Whenever any pound keeper shall have received any beast, as aforesaid, he shall forthwith post, and keep posted, for three days, at his dwelling house, and in two other public places, in the same town, advertisements by him subscribed; stating the name of the impounder or finder, the time and cause of impounding, and a brief description of the beast; and notifying the owner to pay what is legally and justly demandable, and to take the beast away; and shall give the like public notice by the town crier, if such there be within the town. If the value of the beast exceed ten dollars, a copy of such advertisement shall be inserted in some newspaper, if any, printed in the county.

**SECT. 16.** If the owner of such beast shall not, within twenty days next after the posting or publishing such notice, appear and claim the beast, and pay what is demandable under this chapter, including charges, fees and costs, then the pound keeper shall, within the succeeding twenty days and not afterwards, proceed to libel the same, in the name of the impounder or finder, in the manner directed in chapter, one hundred and thirty two; in which process the pound keeper may be a witness.

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When pound keeper may libel the estray. 1834, 137, § 7.

**SECT. 17.** After due notice and examination, the court or justice of the peace, having jurisdiction of the case, may decree a sale of such beast, if they find that such beast has been lawfully impounded and detained; and may issue under the seal of the court, or of the said justice, a precept, in form following:

Court may decree a sale. 1834, 137, § 7.

“STATE OF MAINE.

P. ss: To the sheriff of our county of \_\_\_\_\_ or his deputy, or any constable of the several towns in the same county,

Greeting:

(Seal.) Whereas A. B., of \_\_\_\_\_, within the county of \_\_\_\_\_, through his agent, O. P., pound keeper, by the consideration of (our justice court, holden at \_\_\_\_\_, on \_\_\_\_\_, by \_\_\_\_\_, Esquire, a justice of the peace for said county, or, as the case may be, of our justices of our district court, holden at \_\_\_\_\_, on \_\_\_\_\_, within our county of \_\_\_\_\_,) obtained a decree for the sale of the following (here insert a description of the property, as in the libel) with costs, taxed at \_\_\_\_\_, as to us appears of record, whereof execution remains to be done; we command you, therefore, to make sale of the same, in manner prescribed by law, for the sale of goods and chattels in satisfaction of executions; and after deducting your lawful fees, you will pay over the residue to the said pound keeper, and take his receipt, thereon, for the same: hereof fail not, and make due return, with your doings therein, within thirty days.

Witness, \_\_\_\_\_.” (close to be like that of other executions.)

And the officer shall make sale of the property, in the manner prescribed, by law, for the sale of goods and chattels in satisfaction of executions, and be entitled to like fees out of the proceeds of the sale; and shall pay over the residue to the pound keeper, and take his receipt for the same. He shall be required to make return of his doings to said court or justice in thirty days. The precept shall be similar, in form, to common executions or [on] judgments, with such alterations, as the nature of the case may require.

**SECT. 18.** The pound keeper shall retain the amount of his lawful charges and fees, and pay, to others interested, their lawful dues, respectively. The balance he shall within thirty days pay over to the treasurer of the same county; which balance the latter, or his successor, shall pay over at any time within six years, to such one, on his written request, as shall, satisfactorily to him, make out his right thereto, as having been the owner of the property before it was sold. In case of refusal, on the part of the treasurer, to pay over the same to any claimant, he may appeal to the county commissioners, whose decision thereon shall be final. If such balance remain in the treasury for six years, not claimed and paid

Disposal of proceeds of sale. 1834, 137, § 7.

**CHAP. 30.** over, as aforesaid, it shall become absolutely the property of the county.

Owner may redeem, at any time before decree. 1834, 137, § 7.

**SECT. 19.** The owner of such beast may, at any stage of the proceedings, before a final decree for sale, as aforesaid, redeem the same on payment of all lawful claims and dues thereon, up to the time of his demand to redeem.

Replevin of beasts impounded. 1834, 137, § 8.

**SECT. 20.** Whenever any person shall replevy the beasts, herein mentioned, he shall bring his action against the impounder, or finder, and not against the pound keeper, and the copy of the writ shall be served on the latter, as also on the defendant. The process, in other respects, shall be regulated by the provisions of chapter, one hundred and thirty. And if the plaintiff in replevin be absent, when the writ is sued out, it may be served, and his bondsmen, in the replevin bond, shall be held in the same manner, as though he had himself signed and sealed it; and he may add his signature and seal before trial.

Same subject. 1834, 137, § 8.

**SECT. 21.** If the property shall be replevied, while the aforesaid process, under the libel, is pending, the latter shall be continued in court, till the action of replevin be decided; but no action of replevin shall be sustained, unless the writ be served, before a decree is awarded on the libel.

Rescue, and punishment thereof. 1834, 137, § 9. 17 Mass. 342.

**SECT. 22.** Whoever, in order to prevent the impounding of any beast, lawfully in possession of any person, and taken for the causes, in this chapter mentioned, shall rescue the same, or, directly or indirectly, shall occasion the escape thereof, shall forfeit not less than five, nor more than twenty dollars; and he shall be liable in an action on the case, to pay to the party injured, the full damages with charges and costs, which he might have received by impounding the beast.

Pound breach, and punishment thereof. 1834, 137, § 10. 5 Pick. 514. 17 Pick. 415.

**SECT. 23.** If any person shall make any pound breach, or in any other way, directly or indirectly, convey or deliver any beast, impounded as aforesaid, from the pound or place, where said beast may be restrained, he shall forfeit and pay, to the use of the town, a fine, not less than ten dollars, nor more than fifty dollars, to be recovered by indictment. The person, so offending, shall also be liable to pay the party injured, or impounding said beast or beasts, double the damage or forfeiture, he may be entitled to, by the impounding of such beast, to be recovered in an action on the case.

Masters and parents, liable for minors. 1834, 137, § 10.

**SECT. 24.** When the rescue or pound breach, mentioned in the twenty third section of this chapter, is effected by an apprentice, legally bound by deed, or a minor, the party injured, or impounder, may prosecute for damages or forfeitures, either the master of such apprentice, or the parent of said minor, under whose care he may then be, or the apprentice or minor, at his election.

Restriction as to defence, in such cases. 1834, 137, § 10. 4 Mass. 471.

**SECT. 25.** The defendant in any action, brought for rescuing beasts, distrained or impounded, shall not be allowed to allege, or give in evidence, the insufficiency of the fences, or any other fact or circumstance, to show that the distress or impounding was illegal; but if there is any such ground of objection to the proceeding, of which he is entitled to avail himself, he may have the advantage thereof in an action of replevin, to be brought as provided in chapter, one hundred and thirty.

**SECT. 26.** All forfeitures, mentioned in this chapter, where no other mode of recovery is prescribed, shall be by action of debt to the use of the prosecutor. All civil actions for forfeitures, mentioned in this chapter, without other express limitation, shall be barred, unless commenced within ninety days, from the time the forfeitures accrued.

**CHAP. 30.**  
Limitation of actions for forfeitures.  
1831, 137, § 11.

**SECT. 27.** The fees, which the pound keeper shall receive, shall be twenty five cents, for impounding one or more beasts, at one time; twelve cents and one half for recording each certificate, or advertisement; and the same, for each advertisement posted or published, with four cents, a mile, for his necessary travel.

Pound keeper's fees.  
1834, 137, § 12.

**SECT. 28.** The party impounding such beast, or delivering the same to the pound keeper, shall have a reasonable sum for his trouble, to be determined by the pound keeper; but not exceeding one half of the respective forfeitures mentioned in the third section of this chapter, besides what forfeitures, he may be entitled to, under such section.

Compensation to impounder.  
1834, 137, § 12.

**SECT. 29.** The price, which the pound keeper shall be allowed, for keeping and feeding the beasts, committed to pound, or to his custody, for causes aforesaid, shall be prescribed by the selectmen of his town, and recorded on the town books by the town clerk, and be binding until altered by such selectmen, or their successors.

Expense of keeping beasts impounded.  
1834, 137, § 12.

**CHAPTER 31.**

**OF KEEPING WATCH AND WARD IN TOWNS, AND OF DISORDERS IN STREETS AND PUBLIC PLACES.**

- SECT. 1.** Who are liable to keep watch and ward.
- 2.** Power of selectmen and justices, to order watch and ward to be kept, and proceedings.
- 3.** Charge of constable, and powers of watch.
- 4.** Duties of watch.
- 5.** Badges of constable and watch.
- 6.** Expense of watch, otherwise kept, how defrayed.
- 7.** Proceedings in such case.
- 8.** Penalty for neglect of duty, by a watch.

- SECT. 9.** Penalty for neglect of constable or officer.
- 10.** Constable and watchmen to attend justices, when walking the rounds.
- 11.** Penalty for riding with a naked scythe.
- 12.** Certain pageantry prohibited in streets, in the night.
- 13.** Bonfires in streets and towns, prohibited.
- 14.** Fines, how recovered and appropriated.
- 15.** Masters and parents, liable for minors.

**SECTION 1.** Every male person, of the age of twenty one years or upwards, being able of body, or having estate sufficient to hire a substitute, and not being a minister of the gospel, shall, when duly warned, be liable to watch and ward in his town, either in person or by a sufficient substitute; unless such person reside more than two miles from the place, where the watch or ward is kept.

Who are liable to keep watch and ward.  
1821, 125, § 1.

**SECT. 2.** The justices of the peace resident in any town, together with the selectmen of such town, shall have power, from

Power of selectmen and justices, to or-



**CHAP. 31.**

der watch and ward to be kept, and proceedings.  
15 Maine, 155.

time to time, to direct and order suitable watches to be kept, nightly, in such town, from such hour in the evening, as they shall appoint, until sun rising in the morning: also wards to be kept in the day time and evening, whenever they shall think such watches and wards necessary; such justices and selectmen may designate the time, place and number of persons to be employed in any such watch or ward; and they may give orders in writing accordingly, signed by a major part of such justices and selectmen, directed to any constable of the town, requiring him, from time to time, to warn such watch or ward, and to see that all persons, so warned, do attend and perform their duty in the manner required; and, in the warning thereof, to take care that some able householders, or other sufficient persons, be joined in each watch or ward.

Charge of constable, and powers of watch.  
1821, 125, § 2.

**SECT. 3.** Such constable shall charge the watch, to see that all disturbances and disorders, in the night, be prevented and suppressed; and for that purpose, the watch shall have authority to examine all persons, whom they shall see walking abroad, in the night after ten o'clock, and whom they shall have reason to suspect of any unlawful intention, as to their business abroad at such time, and whither they are going; to enter any houses of ill fame, for the purpose of suppressing any disturbance or riot therein; and to arrest any person there found, making, or abetting others in, such riot or disturbance: and all suspicious persons, thus abroad, who shall not give a satisfactory account of themselves, and all persons, so arrested, in such houses of ill fame, shall be secured by imprisonment, or otherwise, to be safely kept until morning; and shall then be carried before one of the nearest justices of the peace, to be examined and proceeded against, according to the nature of their offences.

Duties of watch.  
1821, 125, § 2.

**SECT. 4.** The watchmen shall walk the rounds, in and about the streets, wharves, lanes, and principal inhabited parts within each town, to prevent any danger by fire, and to see that good order is kept; and shall suitably observe the charge given them, as aforesaid.

Badges of constable and watch.  
1821, 125, § 2, 4.

**SECT. 5.** Each constable, when attending watch or ward, shall carry with him the usual badge of his office; and the watchmen shall carry [such] suitable badge, as the selectmen of their town shall provide.

Expense of watch, otherwise kept, how defrayed.  
1829, 434, § 1.

**SECT. 6.** When the inhabitants of any town shall determine, that a watch shall be kept, in any other manner than is provided in this chapter, the expense thereof shall be defrayed, in like manner as other town charges.

Proceedings in such case.  
1821, 125, § 4.  
1829, 434, § 2.

**SECT. 7.** Whenever any watch shall be established, according to the provisions of the preceding section, the town shall determine the number and qualifications of the persons to be employed for that purpose, and the selectmen shall appoint a suitable person to be captain or officer of the watch: and every watchman shall be equipped in such manner, as the selectmen of the several towns shall determine; and the powers and duties of said officers and watchmen shall be the same, as are before prescribed, in the case of a constable's watch.

Penalty for neglect of duty, by a watch.  
1821, 125, § 5.

**SECT. 8.** If any person, liable to watch and ward, being duly warned by the officer of the watch, or the constable, or by any

person appointed by any such officer, or constable, shall refuse or neglect to appear and perform his duty, either by himself or by a sufficient substitute, without a just and reasonable excuse for the same, he shall forfeit, for each offence, a sum not less than one, nor more than ten dollars, to the use of the town.

SECT. 9. If any constable, or officer of the watch, shall neglect or refuse to observe and execute the orders given him, he shall forfeit a sum, not less than ten dollars, to the use of the town.

SECT. 10. Whenever the said justices of the peace and selectmen shall think fit to walk by night, to inspect the order of the town, wherein they dwell, or shall depute any portion of their number for the purpose, such of the said constables and watchmen shall attend them, or said deputation, as shall be required to do the same; and obey their lawful commands.

SECT. 11. If any person shall ride with a naked scythe, sharpened and hung in a sneath, on the highways, or in any lanes, streets or alleys, he shall forfeit, for each offence, two dollars.

SECT. 12. If any persons, to the number of three or more, between sun setting and sun rising, being assembled together in any of the streets or lanes in any town, shall have any kind of imagery or pageantry, for a public show, whether armed or disguised, or requiring or receiving money or any thing of value on account of the same, or not, any person, being of such company, shall forfeit the sum of eight dollars, or be imprisoned for a term, not exceeding one month.

SECT. 13. If any person shall set fire to any pile of combustible stuff, or be in any wise concerned, in causing or making a bonfire in any street or lane, or any other part of any town, such fire being within ten rods of any house or building, he shall, for each offence, forfeit the sum of eight dollars, or be imprisoned for a term, not exceeding one month.

SECT. 14. The fines, provided for in this chapter, shall be recovered, with costs; the one half of any fine for the use of the town, where the offence shall have been committed, and the other half, to the use of any person, who shall sue for the same.

SECT. 15. Masters shall be liable to pay the several fines, mentioned in this chapter, for the offences of their servants or apprentices, if legally bound to them, at the election of the prosecutor; and parents shall be liable, at the like election, for the offences of the minor children, unless such children are bound to other persons, as servants or apprentices.

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Penalty for neglect of constable or officer.  
1821, 125, § 5.

Constable and watchmen to attend justices, when walking the rounds.  
1821, 125, § 6.

Penalty for riding with a naked scythe.  
1821, 125, § 8.

Certain pageantry prohibited in streets, at night.  
1821, 125, § 9.

Bonfires in streets and towns, prohibited.  
1821, 125, § 10.

Fines, how recovered and appropriated.  
1821, 125, § 10.

Masters and parents liable, for minors.  
1821, 125, § 10.

CHAPTER 32.

OF PAUPERS, THEIR SETTLEMENT AND SUPPORT.

SECT. 1. Different modes of gaining a settlement. SECT. 2. Settlements heretofore acquired, to continue.

**CHAP. 32.**

- SECT. 3.** This chapter, not to interrupt the acquisition of a settlement, previously commenced.
4. Each town bound to support its poor. Overseers.
5. Overseers to have the care of the poor.
6. Kindred of poor persons, liable for their support.
7. Adjudication thereon, by the district court.
- 8, 9. Assessment on kindred, and other proceedings.
10. Filing complaint; summons and service.
11. Summoning other kindred.
12. Respondents' costs. Court may take further order.
13. Overseers may bind out minor children of paupers.
14. Provisions to be made in indentures.
15. Duty of overseers, in respect to bound children.
16. Complaints against the master, how made and prosecuted.
17. If discharged, the minor may be bound anew.
18. Overseers may sue on indentures, for the benefit of the apprentice.
19. Action not to abate, in certain cases.
20. Remedy for apprentice, at the expiration of his term.
21. If apprentice abscond, he may be arrested; proceedings.
22. Liability of persons enticing, or harboring, apprentices.
23. District court may discharge apprentices, for misbehavior.
24. Overseers may bind out adult, indigent, idle persons.
25. Persons aggrieved, may be discharged by the district court.
26. Persons in unincorporated places, to be under the care of overseers of the adjoining town.
27. Remedy for such town, against the town, where he has his settlement.
28. Punishment, and restriction of persons convicted of keeping houses of ill fame. Overseers to prosecute.
29. Overseers to relieve persons in distress, belonging to other towns. Mode of recovering expenditures.
30. Recovery in such action, to bar future controversy.
31. Overseers may set to work, for his own support, any person in jail, chargeable to a town.
- SECT. 32.** Liability of creditor, to refund to towns the expense of supporting a debtor in jail.
33. Discharge from imprisonment, to be no release of the debtor's property, from the debt, and expenses of his support.
34. Compensation of prison keeper.
35. Proceedings for removal, to the place of their settlement, of persons chargeable, or likely to become so.
36. Costs, when taxable. Record of adjudication.
37. Warrant for removal; how executed.
38. Overseers to receive the person removed. Execution for damages and expenses.
39. Appeal from the justice, and proceedings.
40. Complaint may be originally filed in the district court. Proceedings.
41. General provisions, in cases of complaints for removal.
42. Previous to making complaint, notice may be given.
43. Estoppel, unless an answer be returned in two months.
44. Notice and answer may be sent by mail.
45. Penalty, for return of the person removed.
46. Persons having no settlement, to be relieved by the town, where they are in need.
47. Paupers, belonging out of the state, may be removed to their place of residence, or to the house of correction.
48. Towns to pay expense incurred by any inhabitant, after notice, for support of poor.
49. Intemperate poor, may be sent to the house of correction.
50. Expenses for support of a pauper, may be recovered of him.
51. At the death of a pauper, the overseers may take possession of his effects.
52. Overseers authorized to prosecute and defend suits in behalf of their towns.
53. Plantations may raise money, to support poor.
54. Penalty for leaving a pauper in a town, where he has no settlement.
55. Indentures of apprenticeship, discharged at the death of the master.
56. Duty of masters of vessels, arriving with foreign passengers.

SECT. 57. Selectmen may dispense with bond, on certain conditions.  
58. Appointment of visiting officers, in maritime towns.

SECT. 59. Penalty, if masters of vessels attempt to evade the foregoing provisions.  
60. Provisions of this chapter, applicable to cities.

CHAP. 32.

SECTION 1. Legal settlements, in any town in this state, shall be hereafter gained, so as to subject and oblige such town to relieve and support the persons, gaining the same, in case they become poor and stand in need of relief, by the ways and means following, viz:

Different modes of gaining a settlement.  
1821, 122, § 2.

*First.* A married woman shall always follow and have the settlement of her husband, if he have any within this state; otherwise, her own at the time of marriage, if she then had any, shall not be lost or suspended by the marriage;

Married women.  
9 Mass. 201.  
4 Greenl. 293.

*Second.* Legitimate children shall follow and have the settlement of their father, if he have any within the State, until they gain a settlement of their own; but if he have none, they shall in like manner follow and have the settlement of their mother, if she have any;

Legitimate children.  
15 Mass. 237.  
16 Mass. 52, 135.  
2 Greenl. 194.  
4 Greenl. 47, 293.  
7 Greenl. 90.  
1 Pick. 197.

*Third.* Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if any she then have within the state; but neither legitimate, nor illegitimate children, shall gain a settlement by birth, in the places where they may be born, if neither [of] their parents then have any settlement there;

Illegitimate children.  
12 Mass. 429.  
13 Mass. 381.  
14 Mass. 382.  
7 Greenl. 270.  
1 Fairf. 409.  
2 Fairf. 455.  
1 Pick. 144.

*Fourth.* Upon the division of any town, every person having a legal settlement therein, but being absent at the time of such division, and not having gained a legal settlement elsewhere, shall have his legal settlement in that town, wherein his last dwelling place shall happen to fall, upon such division; when any new town shall be incorporated, composed of a part of one or more old incorporated towns, every person, legally settled in any town, of which such new town is wholly or partly so composed, or who has begun to acquire a settlement therein, and who shall actually dwell and have his home within the bounds of such new town, at the time of its incorporation, shall have the same rights in such new town, in relation to settlement, whether incipient or absolute, as he would otherwise have had in the old town, where he dwelt;

Division of towns.  
14 Mass. 253.  
16 Mass. 48.  
1 Greenl. 129.  
13 Maine, 299.  
4 Pick. 117.

*Fifth.* Any minor who shall serve an apprenticeship to any lawful trade, for the space of four years, in any town, and actually set up the same therein, within one year after the expiration of said term, being then twenty one years old, shall thereby gain a settlement in such town;

Apprenticeship.

*Sixth.* Any person, of the age of twenty one years, who shall hereafter reside in any town within this state, for the term of five years together, and shall not during that term receive, directly nor indirectly, any supplies or support, as a pauper, from any town, shall thereby gain a settlement in such town;

Five years' residence.  
1 Fairf. 97.  
13 Maine, 321.  
7 Pick. 42.

*Seventh.* Any person, resident in any town on the twenty first day of March, in the year, eighteen hundred and twenty one, who had not, within one year previous to that date, received support or supplies from some town, as a pauper, shall be deemed to have a settlement in the town, where he dwelt and had his home,

Residence on March 21, 1821.  
3 Greenl. 136,  
172, 205, 220,  
229, 388, 436,  
455.  
4 Greenl. 298.  
5 Greenl. 143,  
396.

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7 Greenl. 270.  
8 Greenl. 200.  
2 Fairf. 190.  
15 Maine, 58,  
479.  
Incorporation  
of towns.  
2 Fairf. 455.

Settlements  
heretofore ac-  
quired, to con-  
tinue.  
1821, 122, § 2.  
10 Mass. 411.  
11 Mass. 441.

This chapter  
not to interrupt  
the acquisition  
of a settlement,  
previously com-  
menced.

Each town  
bound to sup-  
port its poor.  
Overseers.  
1821, 122, § 3.  
1 Mass. 459.

Overseers to  
have the care of  
the poor.  
1821, 122, § 4.

Kindred of poor  
persons, liable  
for their sup-  
port.  
1821, 122, § 5.  
15 Pick. 159.

Adjudication  
thereon, by the  
district court.  
1821, 122, § 5.  
3 Mass. 442.  
14 Mass. 243.  
5 Greenl. 324.

unless he may have subsequently acquired some other set under laws existing for the time being ;

*Eighth.* All persons, dwelling and having their homes unincorporated place, at the time when the same shall be rated into a town, having resided within the limits thereof, years previous to such incorporation, and not having received as a pauper, shall thereby gain a legal settlement and any such person, who had so resided there, for a less time five years, previous to such incorporation, shall gain a settlement therein, at the end of five years continued residence.

SECT. 2. All settlements acquired under laws, heretofore in force in this state, and not already lost, and all settlements made under this act, shall remain, until lost by gaining others in the modes herein before specified ; and upon such new settlements being gained, all former ones shall be defeated and lost.

SECT. 3. No person, who has begun to acquire a settlement under the laws in force, at and before the time, when the provisions of this chapter shall take effect, under its regulations, shall be prevented or delayed thereby ; but he shall acquire a settlement in the same time and manner, as if the former laws were continued in force.

SECT. 4. Every town within this state shall be helden to support all poor and indigent persons, lawfully settled in the town, whenever they shall stand in need of such assistance ; and that moneys therefor, and for their employment, in the same manner that moneys for other town charges are raised. Towns may, at their annual meetings, choose any number, not exceeding ten, suitable persons, dwelling therein, to be overseers of the poor ; where such are not specially chosen, the selectmen shall be the overseers of the poor.

SECT. 5. The overseers of the poor shall have the care and oversight of all such poor and indigent persons, as are chargeable to their respective towns ; and shall see, that they are relieved, supported and employed, either in the work houses, or in such other tenements belonging to such towns, or in such other way, as the overseers of the poor, at a legal meeting, may direct, or otherwise at the direction of their overseers, and at the cost of such towns.

SECT. 6. The kindred of any such poor person, if any be in the line or degree of father or grandfather, mother or grandmother, children or grand children, by consanguinity, living in this state, of sufficient ability, shall be holden to support such person, in proportion to such ability, respectively.

SECT. 7. The district court, in the county, where any such kindred to be charged shall reside, upon complaint made in any town, or by any kindred, who shall have been at any time chargeable for the relief and support of any such pauper, may, on due application, either upon the appearance or default of the kindred, so sum assessed and apportion such sum as they shall judge reasonable to be assessed upon such of said kindred, as they shall judge to be of sufficient ability, and in proportion thereto, to the time of such assessment with costs, to be apportioned amongst the respondents at the discretion ; and may enforce payment thereof by warrant of distress.

provided, that such assessment shall not extend to any expense for any relief, afforded more than six months previous to the filing of such complaint. CHAP. 32.

SECT. 8. The said court may further assess and apportion, upon the said kindred, such weekly sum for the future, as they shall judge sufficient for the support of such pauper, to be paid every three months till the further order of court. Upon application, from time to time of the town or kindred, to whom the same shall have been ordered to be paid, the clerk of said court shall issue, and may renew, a warrant of distress, for the arrears of any preceding quarter, returnable to the next following term of said court.

Assessment on kindred, and other proceedings. 1821, 122, § 5.

SECT. 9. The said court may further order, with whom of such kindred, that may desire it, such pauper may live and be relieved, and for such time, with any or either, as they shall judge proper; having regard to the comfort of the pauper, as well as the convenience of the kindred.

Same subject. 1821, 122, § 5.

SECT. 10. The complaint, provided for in the seventh section of this chapter, shall be filed in the office of the clerk of the district court; who shall issue a summons thereon, requiring the kindred, therein named, to appear and answer thereto. The summons may be directed to any officer, qualified to serve other civil process between the same parties, and served as an original summons, fourteen days, at least, before the sitting of the court, to which it is returnable.

Filing complaint, summons and service. 1821, 122, § 5.

SECT. 11. On the suggestion of either party, that there are other kindred of ability, not summoned in the original process, the complaint may be amended, by inserting their names; and such other kindred may be summoned in like manner; and upon due notice, whether they appear or are defaulted, the court may proceed against them, in the same manner, as if they had been originally named in the complaint.

Summoning other kindred. 1821, 122, § 5.

SECT. 12. If such complaint be not entered, or be discontinued, or withdrawn, or be adjudged groundless, the respondents shall recover costs. The said court may take further order, from time to time, in the premises, upon application of any party interested; and may alter such assessment and apportionment, on due notice, as circumstances may require.

Respondents' costs. Court may take further order. 1821, 122, § 5.

SECT. 13. The overseers of the poor may bind by indentures, as apprentices, or as servants, in any lawful employment, any minor children, whose parents become actually chargeable to their town; or any, whose parents, in the opinion of said overseers, are unable to maintain them, whether they receive alms or are chargeable, or not; or any who are themselves chargeable, as having a settlement in said town, to any citizen of this state; that is to say, male children till they come to the age of twenty one years, and females till they come to the age of eighteen years, or are married within that time: and the consent of said minors, though more than fourteen years of age, or of their parents, shall not be material to the validity of such binding.

Overseers may bind out minor children of paupers. 1821, 122, § 6. 2 Pick. 451.

SECT. 14. Provision shall be made, in such deed or indentures, for the instructing of male children, so bound out, to read, write and cypher; and of females to read and write; and for such other

Provisions to be made in indentures. 1821, 122, § 6. 5 Pick. 250.

**CHAP. 32.** instruction, benefit and allowance, either within or at the end of the term, as the overseers may think reasonable.

Duty of overseers, in respect to bound children. 1821, 122, § 7.

**SECT. 15.** It shall be the duty of said overseers to inquire into the treatment of such minor children, who now are, or may be bound out, by force of this chapter; and to protect and defend them in the enjoyment of their rights, as well in reference to their masters, as others.

Complaints against masters, how made and prosecuted. 1821, 122, § 7. 11 Mass. 24.

**SECT. 16.** Upon the complaint by said overseers, made to the district court, in the county, where their town is, or where the master of the child bound out as aforesaid, may reside, against the master of any such child, for abuse, ill treatment or neglect, said court, having duly notified the party complained of, may proceed to hear the complaint; and if the same be supported, and the cause shall be judged sufficient, may discharge such child from his or her master, with costs, for which execution may be awarded: otherwise the complaint shall be dismissed; but with or without costs for the respondents, at the discretion of the court, as the complainants may appear to be justified by probable cause or not.

If discharged, minor may be bound anew. 1821, 122, § 7.

**SECT. 17.** Any such apprentice or servant, so discharged, or whose master may decease, may be bound out anew, as aforesaid, for the residue of the term.

Overseers may sue on indentures, for benefit of the apprentice. 1821, 122, § 7. 4 Pick. 106.

**SECT. 18.** Said overseers may also have remedy, by action, on such indentures, against any person liable thereby, for recovery of damages for breaches of any of the covenants therein contained; and the amount recovered shall be placed in the town treasury, deducting reasonable charges, and disposed of by the overseers for the time being, at their discretion, within the term, for the benefit and relief of such apprentice or servant. The remainder, if any, shall be paid over to him, at the expiration of the term. The court, before which such cause shall be tried, may also, upon the plaintiff's request, if they see cause, liberate and discharge such apprentice or servant from his master, if not already done by the process, herein before provided.

Action not to abate, in certain cases. 1821, 122, § 7.

**SECT. 19.** No action, brought by overseers as aforesaid, shall abate by the death of some of them, or by their being succeeded in office, pending the action, but it shall proceed in the name of the original plaintiffs, or the survivors of them.

Remedy for apprentice, at expiration of his term. 1821, 122, § 7.

**SECT. 20.** Such apprentice or servant shall have remedy, at the expiration of his term, for damages for the aforesaid causes, other than for such causes, as may have been tried in a suit or suits, commenced as aforesaid by the overseers, either in a special action on the case, or trespass, or on the deed or indentures aforesaid; provided, the suit shall be commenced within two years, after the expiration of his term. For this purpose, he shall be entitled to the custody and use of the said deed or indentures, or a copy, as the circumstances of the case may require, and to bring the action, in his own name, as assignee of the instrument; and no endorsement shall be necessary by the overseers.

If apprentice abscond, he may be arrested. Proceeding. 1821, 122, § 7.

**SECT. 21.** If any apprentice or servant, bound as aforesaid, shall unlawfully depart from the service of his master, any justice of the peace, of the county where the master dwells, or where the apprentice or servant may be found, upon complaint on oath, made

to him by the master, or by any one in his behalf, may issue his warrant to apprehend the apprentice or servant, and bring him before the said justice; and if the complaint shall be supported, the justice may order the offender to be returned to his master, though he may reside in another county, or may commit him to the common jail or house of correction, there to remain for a term not exceeding twenty days, unless sooner discharged by his master.

SECT. 22. Every person, enticing such apprentice or servant away from his master, or harboring him, knowing him to have eloped, shall be liable to the master's action for all damages sustained thereby.

Liability of persons enticing, or harboring, apprentices. 1821, 122, § 7.

SECT. 23. The district court, either in the county, where the overseers binding, or their successors, or the master of any apprentice or servant bound, live, may, upon complaint of such master, for gross misbehavior, discharge such apprentice or servant, from his apprenticeship or service, after due notice to such apprentice or servant, and to the overseers of the poor of the town, where he is settled.

District court may discharge apprentices, for misbehavior. 1821, 122, § 7.

SECT. 24. Said overseers shall have the power to set to work, or bind out to service, by deed for a term not exceeding one year at a time, all such persons residing, and lawfully settled in their respective towns, or who have no such settlement in this state, married or unmarried, upwards of twenty one years of age, as are able of body; but have no apparent means of support, and who live idly, and all persons, who are liable by any law to be sent to the house of correction, upon any reasonable terms and conditions.

Overseers may bind out adult, indigent, idle persons. 1821, 122, § 8. 1 Pick. 23.

SECT. 25. Any person, thinking himself aggrieved, by the doings of said overseers in the premises, may apply, by complaint, to the district court in the county where they are bound, or where said overseers reside, for relief, which court, after due notice to the master of such person, and the overseers of such person's town, shall have power, if they see cause, to release the complainant from his master, or the care of the overseers; otherwise to dismiss the complaint; and to give costs against either party, or against the said town, at their discretion.

Persons aggrieved, may be discharged by the district court. 1821, 122, § 8.

SECT. 26. All persons, standing in need of relief, living without the bounds of any incorporated town, shall be under the care of the overseers of the poor appointed in the adjoining town, wherein the inhabitants of such unincorporated place are liable to be taxed; and the said overseers may bind out the children of such poor persons, as if they were inhabitants of the town, in which such overseers are appointed; and may set to work and bind out, in the manner described in the twenty fourth section of this chapter, persons of like description, dwelling in such unincorporated place, as if in their own towns; such persons to be entitled, also, to similar remedy and relief, if aggrieved thereby.

Paupers in unincorporated places, to be under the care of overseers of the adjoining town. 1821, 122, § 9. 16 Maine, 137.

SECT. 27. Whenever the overseers of the poor of any town shall furnish relief and support to any poor persons, residing within any unincorporated place, as provided in the section preceding, the town furnishing the same shall be remunerated by the town, where such poor persons may have their settlement, in the same manner, as if such persons had been residents of their town.

Remedy of such town, against the town, where he has his settlement. 1837, 27.



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Punishment and restriction of persons, convicted of keeping houses of ill fame. Overseers to prosecute. 1821, 122, § 10.

Overseers to relieve persons in distress, belonging to other towns. Mode of recovering expenditures. 1821, 122, § 11. 5 Mass. 325. 10 Mass. 411. 15 Maine, 363. 12 Pick. 1. 15 Pick. 19.

14 Mass. 194, 186. 1 Pick. 126, 470. 10 Pick. 150.

Recovery in such case, to bar future controversy. 1821, 122, § 11.

Overseers may set to work, for his own support, any person in jail, chargeable to a town. 1821, 122, § 12. 12 Mass. 262.

Liability of creditor, to refund to towns the expense of supporting the debtor in jail. 1821, 122, § 12.

Discharge from imprisonment, no release of debtor's property, from the debt, and expenses of his support. 1821, 122, § 13.

Compensation to prison keeper.

**SECT. 28.** Any person, duly convicted of keeping a house of ill fame, before any justice of the peace or district court, may be ordered to the house of correction, either of their own town or county, or to the county jail, for a term not exceeding one month; and it shall be the duty of the overseers of the poor, in their respective towns, to prosecute all those, whom they may have good cause to suspect of being thus guilty. Any person thus convicted, shall not be allowed to keep lodgers or boarders in any town, without license of the overseers thereof.

**SECT. 29.** The said overseers, in their respective towns, shall also provide for the immediate comfort and relief of all persons, residing or found therein, not belonging thereto, but having lawful settlements in other towns, when they shall fall into distress and stand in need of immediate relief, and until they shall be removed to the places of their lawful settlements; the expenses whereof, incurred within three months, next before written notice given to the town to be charged, as also of their removal, or of their burial, in case of their decease, may be sued for and recovered by the town, incurring the same, against the town, which is liable therefor, in an action at law; provided, that such action for damages be instituted, within two years after the cause of action shall have arisen; but not otherwise.

**SECT. 30.** A recovery in such action shall bar the town, against which it shall be had, from disputing the settlement of such pauper, with the town so recovering, in any future action brought for the support of such pauper.

**SECT. 31.** The overseers of the poor in any town, in which there is a county jail, are hereby authorized and directed, at their discretion, by their order in writing, to set to work under themselves or others, any debtor, committed to prison upon mesne process or execution, and actually chargeable to any town in this state for his support, so far as may be necessary for his support, and no further. The town, chargeable for the maintenance of such debtor, shall be liable only for the deficiency of his earnings to pay the expenses of his support, whilst such order remains in force.

**SECT. 32.** Every town, which shall incur and pay the charges of maintaining in prison any person, as a pauper, committed on mesne process or execution, in any civil action, may recover the same in an action at law against the creditor, at whose suit such debtor shall have been committed; not to exceed the rate of one dollar and twenty five cents, a week, during such imprisonment.

**SECT. 33.** Any such creditor may, at any time, discharge his debtor, committed as aforesaid, from prison, and such discharge shall not operate, to release the debtor from the debt and costs, on which he was committed; but such debt and costs, together with all sums, which the creditor may have paid, for the support of the debtor under imprisonment, shall be and remain a legal claim against the goods and estate of the debtor; his body being, forever thereafter, exempted from arrest therefor.

**SECT. 34.** The keeper of any prison shall be entitled to receive, after the rate of one dollar and twenty five cents per week, and no more, for the entire support of each debtor, being a pauper in close confinement under his care.

**SECT. 35.** All persons, actually chargeable, or who, through age or infirmity, idleness, or dissoluteness, are likely to become chargeable to the places, wherein they are found, but in which they have no lawful settlement, may be removed to the places of their lawful settlements, if they have any within the state. In order to effect such removal, and also to recover the expenses, incurred for the relief of such persons, if the overseers of the town, where such persons are found, choose that mode in preference to a civil action, said overseers may apply by complaint to any justice of the peace in their county, not an inhabitant of their town; and the said justice is authorized to issue his summons, to be served as other civil processes may be, upon the inhabitants of the town, where said person's settlement is alleged to be, and also upon the party whose removal is contemplated, and upon such witnesses as he may see fit. The said justice may examine the said party, to be removed, under oath, and may compel his attendance for that purpose, by warrant, if he see cause. He shall hear his objections to such removal, and, for good cause, may continue the process once, or more times, not exceeding three months in all; and after due examination and hearing, whether the town summoned appears or not, shall proceed to give judgment for, or against, the complainants, and make a record thereof.

**SECT. 36.** In such cases, costs shall be awarded in favor of the prevailing party, except that, in case of default, the town, summoned, shall not be entitled to costs: and the record shall state the determination of the justice, as to the town, where the party, intended to be removed, has his legal settlement; and as to his removal, and whether for being actually chargeable, or only likely to become so; and the damages for expenses incurred by said town, making complaint; and the estimated expenses of removal, if such removal shall be ordered, in addition to the costs, above mentioned.

**SECT. 37.** Upon judgment of removal, said justice, within three months, and not afterward, may issue his warrant of removal, directed to the sheriff of the county or his deputy, the constable of the town where such person is to be removed, or to any individual by name, or all or any of them, to be served; also requiring the overseers of the poor of the town, to which such person is to be sent, to receive and provide for him, as an inhabitant of that town; a copy of which warrant shall be served on some one or more of said overseers. Such person may be transported, either by land or water.

**SECT. 38.** Such overseers shall be obliged to receive, and provide for such person accordingly. Said justice may also award execution, as in other cases, for the aforesaid damages, costs and estimated expenses of removal; and the execution may be directed to, and served by, any officer in the county, where the town is, against which it issues, qualified to serve executions in civil actions.

**SECT. 39.** Either party, including the person ordered to be removed, aggrieved by the judgment aforesaid, may appeal to the next district court for the same county, which court shall have appellate jurisdiction of the case, and hear and decide the same without a jury, unless either party require one; provided, that the

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Proceedings for removal to the place of their settlement, of persons chargeable, or likely to become so. 1821, 122, § 15. 8 Mass. 276. 11 Mass. 379.

Costs, when taxable. Record of adjudication. 1821, 122, § 15.

Warrant for removal, how executed. 1821, 122, § 15.

Overseers to receive the person removed. Execution for damages and expenses. 1821, 122, § 15.

Appeal from the justice, and proceedings. 1821, 122, § 15.

**CHAP. 32.** person, to be removed, may be required to enter into re- to prosecute his appeal with effect, and other purposes, vided in civil actions. If the appeal be not entered, may, on complaint of the party prevailing before the sai the peace, affirm the said judgment with additional dama have intervened, and costs.

Complaint may be originally filed in the district court. Proceedings. 1821, 122, § 16.

**SECT. 40.** Said overseers may, at their election, file a complaint, originally, in the district court, held in the county or town, setting forth the facts of the case, and cause the defendant to be summoned, in time and manner as aforesaid, and adjudge the person to be removed: and such court shall hear and decide the same without a jury, unless either party require one, and grant judgment and execution in the same manner, as in cases coming before the court by appeal; and, in all their adjudications in the premises, shall state the facts, on which their judgment is founded, and, if error in law exists, either party may cause the same to be corrected in the supreme judicial court; if the writ of error is granted in one year after such judgment was rendered. If such judgment is affirmed, the defendant in error shall recover his costs; if the plaintiff shall be restored to all they have lost, with interest; and the supreme judicial court may require of the district court to set out any material facts omitted, or explain such as do not appear clearly stated, unless a new statement be agreed by the parties.

General provisions, in cases of complaints for removal. 1821, 122, § 11, 17.

**SECT. 41.** In all cases of complaint, as provided in the thirty fifth and fortieth sections of this chapter, whether made in the justice of the peace, or the district court, depositions may be taken for any cause, authorized in other civil actions, and the same shall not abate, so far as respects the damages and costs, by the death of the person, whose removal was applied for, pending the final decision on the question of settlement on any such complaint; and shall estop the party against whom the decision is made, from denying the settlement of such person in any future suit, of whatever nature, between the same towns.

Previous to making complaint, notice may be given. 1821, 122, § 17. 6 Mass. 501. 12 Mass. 307. 15 Maine, 169.

**SECT. 42.** The said overseers may, in all cases, if it shall appear expedient, previous to any such application to a justice of the peace, or the district court, send a written notification, containing the facts relating to any person, actually become chargeable as a pauper to the town, to one or more overseers of the place, where his removal is supposed to be, and requesting them to remove him; and if they may do so, may do, by a written order, directed to any person the overseers may designate, who is hereby authorized to execute the same.

Estoppel, unless an answer be returned in two months. 1821, 122, § 17. 1 Mass. 513. 4 Mass. 180, 273. 5 Mass. 86. 8 Mass. 104. 16 Mass. 426. 1 Greenl. 329. 3 Greenl. 197, 453. 4 Greenl. 293, 475. 5 Greenl. 31. 21 Pick. 83.

**SECT. 43.** If such removal is not effected by the last section, the overseers, within two months after receiving such notice, shall, if it shall appear expedient, within two months, send a written answer, stating the facts, and objections to the removal of the pauper, signed by one or more of the overseers, requesting such removal, and if they shall fail so to do, the overseers, who received such notice, may cause him to be removed to the town of his supposed settlement, by a written order, directed to any person they may designate, who is hereby authorized to execute the same; and the overseers of the town, to which the pauper is sent, shall be obliged to receive and provide for him; and

shall be liable for the expenses of his support and removal, to be recovered by an action by the town, incurring the same, and shall be barred, from contesting the question of settlement, with the plaintiffs in such action.

SECT. 44. If the written notice or answer thereto, provided for in the twenty ninth, forty second and forty third sections of this chapter, shall be sent by mail, and shall arrive at the post office in the town, where the overseers of the poor of the town, to whom such notice or answer may be directed, shall reside, it shall be deemed equivalent to an actual delivery of such notice or answer to such overseers.

Notice and answer, may be sent by mail. 1835, 149.

SECT. 45. Any person, lawfully removed, agreeably to this chapter, to the place of his lawful settlement within this state, who shall voluntarily return to the town, from which he was removed, without the consent of the overseers thereof, [he] shall be deemed a vagabond, and upon conviction thereof, before any justice of the peace in the same county, may be sent to the house of correction.

Penalty, for return of the person removed. 1821, 122, § 17.

SECT. 46. The overseers of the poor, of each town, shall also relieve and support, and, in case of their decease, decently bury all poor persons residing or found in their towns, having no lawful settlement within this state, when they stand in need; and may employ them as they may other paupers: the expense whereof may be recovered of their relations, if they have any, chargeable by law for their support, in manner herein before provided; otherwise it shall be paid out of their respective town treasuries.

Persons having no settlement, to be relieved by the town, where they are in need. 1821, 122, § 18.

SECT. 47. Upon the complaint of the said overseers of any town, any justice of the peace may, by warrant directed to, and to be executed by any constable, or any other person therein designated, cause any such pauper, to be sent and conveyed at the expense of the town, by land or water, to any other state, or to any place beyond sea, where he belongs, if the justice thinks proper, and if he may be conveniently removed; but if he cannot be so removed, he may be sent to, and relieved and employed in, the house of correction or work house, at the expense of the town.

Paupers, belonging out of the state, may be removed to their place of residence, or to the house of correction. 1821, 122, § 18. § Greenl. 71.

SECT. 48. Every town shall be held to pay any expense, which may be necessarily incurred for the relief of a pauper, by any inhabitant, who is not liable by law for his support, after notice and request made to the overseers of the said town, and until provision shall be made by them.

Towns to pay expense incurred by any inhabitant, after notice, for support of poor. 1821, 122, § 18. 12 Mass. 333. 14 Mass. 396, 450. 15 Mass. 236.

SECT. 49. When any poor person, being in any town in this state, and standing in need of support, is notoriously subject to habits of intemperance, it shall be the duty of the overseers of the town in such town to apply, by complaint, to any justice of the peace in their county, who shall issue a warrant thereon against any such person; and after a hearing before such justice, if he shall adjudge that such person is thus subject to habits of intemperance, he shall order him to be committed to the house of correction, there to be supported at the expense of the town, in which he has a settlement; and when not having any such settlement in this state, at the expense of the county; till discharged, by the overseers of the town, in which such house of correction is situated, or by two justices of the peace and quorum.

Intemperate poor, may be sent to the house of correction. 1821, 122, § 18.

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Expenses for support of a pauper, may be recovered of him.

14 Mass. 227.  
16 Mass. 215.  
4 Greenl. 258.

At the death of a pauper, the overseers may take possession of his effects.

1821, 122, § 20.  
8 Greenl. 315.  
6 Pick. 462.

Overseers may prosecute and defend suits, in behalf of their towns.

1821, 122, § 21.

Plantations may raise money, to support poor.

1821, 122, § 21.  
7 Greenl. 132.

Penalty for leaving a pauper in a town, where he has no settlement.

1821, 122, § 22.  
16 Mass. 393.  
2 Greenl. 5.  
1 Pick. 465.  
21 Pick. 83.

Apprenticeship, discharged by death of the master.

1821, 122, § 7.

Duty of masters of vessels, arriving with foreign passengers.

1821, 123.  
1835, 154, § 1, 3.

SECT. 50. Any town, which has incurred expense for the support of any pauper, whether legally settled in such town or not, may recover the amount of the same against such person, his executors or administrators, in an action of assumpsit.

SECT. 51. Upon the death of any pauper, who, at the time of his decease, shall be actually chargeable to any town, the overseers of the poor of such town may take, into their possession, all the personal property of such pauper. If no administration shall be taken upon the estate of such pauper, within thirty days after his decease, said overseers may sell so much of such property, as may be necessary, to repay the expenses incurred for such pauper. If any part of such property shall be withheld from said overseers, they shall have the same remedy for the recovery of such property, or the value thereof, as an administrator of said pauper might have in like case.

SECT. 52. In all actions and prosecutions by complaint under the provisions of this chapter, for or against any town, or against any individual, the overseers of the poor of any town becoming a party, or any person in writing under their hands appointed, may appear and prosecute or defend the same to final judgment and execution, in behalf of such town.

SECT. 53. Any plantation, at a legal meeting for the purpose, is empowered to raise money for the relief of the poor therein, to be applied by the assessors thereof.

SECT. 54. If any person shall bring into, and leave any poor and indigent person in any town in this state, wherein such pauper is not legally settled, knowing him to be poor and indigent, and with intent to charge such town with his support, he shall forfeit a sum, not exceeding one hundred dollars, for every such pauper; to be sued for and recovered by and to the use of such town, by action of debt, in any court proper to try the same.

SECT. 55. No indenture of apprenticeship or service, made in pursuance of this chapter, shall bind the minor after the death of his master or mistress; but the apprenticeship or service shall from thenceforth be discharged, and the minor may be bound out anew.

SECT. 56. When any ship or vessel, having any passengers on board, who have no settlement within this state, shall arrive at any port or harbor within the state, the master of such ship or vessel, before such passengers come on shore, shall leave a list of their names, and the places where said passengers first embarked on board such ship or vessel, with the overseers of the poor, where such passengers shall arrive. The master of such ship or vessel shall not land any such persons without the permission of the selectmen, unless he shall have entered into bond to such town, with sufficient sureties to the satisfaction of said selectmen, in a sum, not exceeding five hundred dollars for each passenger, to save harmless such town, and all other towns within the state, from all manner of charge and expense, which may arise from such passengers, as paupers; for and during the term of three years. For any neglect of the provisions of this section, said master shall forfeit and pay two hundred dollars, for each passenger so coming on shore, or landed; to be recovered by action of debt, by any person, who shall sue for

the same, one moiety thereof to the use of the state, and the other moiety to the prosecutor. And any justice of the peace in the county, where such ship or vessel shall arrive as aforesaid, on complaint in writing, made to him by a majority of the overseers of the poor of the city or town, where the vessel arrived, that the master thereof has not complied with the foregoing provisions of this section, shall issue his warrant to the sheriff of said county, or any of his deputies, or constable of said town, requiring them to attach and detain such ship or vessel, until said penalty and the costs shall be paid by said master; but if not paid within twenty days, then the officer, having the warrant, shall sell said vessel at auction, after posting public notice of the sale in said town, four days beforehand; and after deducting from the amount, all the said penalty and costs, shall pay over the balance to the owner on demand.

SECT. 57. The selectmen of the several towns of this state may, at their election, dispense with the bond, required by the section last preceding, if the master or owner of the ship or vessel, in which any such passengers may arrive, as aforesaid, shall, before the landing of such passenger, pay into the treasury of the town, at which such ship or vessel shall arrive, such sum as said selectmen shall think reasonable, not exceeding five dollars for every such passenger, whom he may intend to land; to be appropriated as such town may direct, for the support of paupers.

Selectmen may dispense with bond, on certain conditions. 1838, 339, § 1.

SECT. 58. Any town, accessible by ships or vessels, shall have power to appoint one or more visiting officers, whose duty it shall be, on the arrival of any ship or vessel, having on board one or more such passengers, to go on board such ship or vessel, and there remain, until the provisions of the fifty sixth and fifty seventh sections of this chapter shall be complied with. It shall be the duty of such visiting officers, or either of them, to prevent the landing of any such passenger, against the provisions of said sections. In case of the violation of said provisions, or an intention to violate, suspected by them, it shall be the duty of such officers to give information to the selectmen of their town. A reasonable compensation shall be paid to any such officer, by the master or owner of such ship or vessel, to be fixed by the selectmen.

Appointment of visiting officers, in maritime towns. 1838, 339, § 2.

SECT. 59. If any master or commanding officer of any such ship or vessel shall land any such passenger, at any place within this state, other than that to which such ship or vessel shall be destined, with the intent to avoid the requirements of this chapter, such master or commanding officer shall forfeit one hundred dollars, for every such foreign passenger thus landed; to be sued for and recovered in the same manner and to the same uses, as the penalty provided in the fifty sixth section of this chapter.

Penalty, if masters of vessels attempt to evade the foregoing provisions. 1838, 339, § 3.

SECT. 60. Every thing prescribed in this chapter, in relation to towns, shall also be applicable to any city in this state; and in relation to the selectmen of any town, to the mayor and aldermen of any city; and in relation to the overseers of the poor of any town, to the overseers of the poor of any city, or to such other officers as have the care and charge of the poor in said city.

Provisions of this chapter, applicable to cities.

CHAP. 33.**CHAPTER 33.**

## OF ENGINES, ENGINE MEN, AND FIRES.

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| <p>SECT. 1. Selectmen of towns may appoint engine men.</p> <p>2. Exemption from military duty.</p> <p>3. Term of appointment, meetings and officers.</p> <p>4. Of firemen appointed under special laws.</p> <p>5. Engine companies may establish by laws.</p> <p>6. Duties of engine companies.</p> <p>7. Discharge of negligent engine men, from the company.</p> <p>8. Selection from engine men, for other duties, at fires.</p> <p>9. Election of fire wards.</p> <p>10. Their duties.</p> <p>11. Powers of selectmen, in their absence.</p> <p>12. Powers of other officers, in their absence.</p> <p>13. Powers of fire wards, during fires.</p> | <p>SECT. 14. Penalty, for refusing obedience.</p> <p>15. Compensation to owners of buildings demolished, whereby fire is stopped.</p> <p>16. Persons dissatisfied, may apply to the county commissioners.</p> <p>17. No compensation to the owner of the building, where the fire originated.</p> <p>18. Punishment, for plundering at fires.</p> <p>19. Sailmakers, riggers and others, in maritime towns.</p> <p>20. Penalty, for violation by livery stable keepers.</p> <p>21. Appropriation of penalties.</p> <p>22. Engine men, excused from serving as jurors.</p> <p>23. Limitation of the foregoing regulations.</p> |
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Selectmen of towns may appoint engine men. 1831, 506, § 1.

Exemption from military duty. 1831, 506, § 1.

Term of appointment, meetings and officers. 1821, 132, § 1. 1830, 473.

Firemen appointed under special laws. 1831, 134, § 3.

SECTION 1. Whenever any town, corporation or individuals, shall possess, and keep for public use, any fire engine, the selectmen of the town, in which the same is kept, are empowered to appoint any number of suitable persons they may deem necessary, not exceeding sixty, to each engine having a suction hose, and not exceeding thirty five, if without a suction hose, to be engine men.

SECT. 2. The engine men, so appointed, shall be exempted from all military duty, except that of being detached or called out to execute the laws, to suppress rebellion, or repel invasion; provided, that every person, claiming such exemption, shall first produce to the commanding officer of the company to which he belongs, on or before the second Tuesday of April annually, the certificate of the selectmen, that he has been duly appointed an engine man, and that he faithfully performs his duties, as such.

SECT. 3. Such engine men shall continue in office, during the pleasure of the selectmen; and they are hereby authorized to meet annually, in the month of April, May, August, October and November, and at the May meeting to elect a master and director or directors, clerk, assistant clerk, and such other officers of the company, as shall be deemed necessary to give efficiency to their operations.

SECT. 4. The chief engineer, engineers and firewards, and other officers appointed for particular cities, towns or districts, under the provisions of special laws, shall have the same power as to pulling down or demolishing any house or building, to prevent the spreading of fires, and as to other things affecting the extinguishment thereof, as firewards now have, by the laws now in force in this state; and the city or town, to which they belong, shall be liable to pay such compensation for damages consequent upon the acts of the chief engineer, engineers and firewards, and other officers, as other towns

are liable to pay for similar damages; and the members of the fire department in such towns, cities or district[s] shall enjoy all the privileges, and be liable to all the duties of other firemen in the state.

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SECT. 5. The engine men, appointed under the authority given in the first section, may establish such rules and regulations, respecting their duty, as shall be approved by the selectmen, and shall not be repugnant to the laws of the state; and annex penalties, to be recovered by their clerk; but no penalty for any one offence shall exceed six dollars.

Engine companies may establish by laws. 1821, 132, § 1.

SECT. 6. The companies of engine men, appointed as aforesaid, shall be bound to meet once every month, and oftener if necessary, for the purpose of examining the state of the engines, to which they belong, and the appendages of the same; and it shall be their duty, by night, or by day, under the direction of the firewards of the town, to use their best endeavors to extinguish any fire in the same, or the immediate vicinity thereof, that shall come to their knowledge, without delay.

Duties of engine companies. 1821, 132, § 2.

SECT. 7. When any engine man, or any member of either of the companies, mentioned in the fourth section, shall be remiss or negligent in the discharge of his duties, in the opinion of the selectmen, it shall be their duty, on proof thereof, to discharge him from the said company, and appoint some other person in his stead.

Discharge of negligent engine men, from the company. 1821, 132, § 4.

SECT. 8. The selectmen of any town may, in their discretion, select from the engine men any number, for each engine in said town, whose duty it shall be, under the direction of the fire wards, to attend fires therein with axes, fire hooks, fire sails and ladders, and perform such further duty, as the selectmen shall from time to time prescribe.

Selection from engine men, for other duties, at fires. 1821, 132, § 5.

SECT. 9. Each town, at the annual meeting, may elect as many fire wards, as may be deemed necessary; and each person, so chosen, shall be notified in three days, and he shall enter his acceptance or refusal of the office with the town clerk, within three days after such notice, on penalty of ten dollars, unless excused by the town; and if excused, the town shall elect another in his room.

Election of fire wards. 1821, 132, § 6.

SECT. 10. When any fire shall break out in any town, the fire wards shall, immediately, attend at the place, with their badges of office; and when there, any three of them shall have power to direct any building, to be pulled down or demolished, as they may judge necessary, to prevent the spreading of the fire.

Their duties. 1821, 132, § 6.

SECT. 11. If such fire wards be not present, a major part of the selectmen present, shall have the same power.

Powers of selectmen, in their absence. 1821, 132, § 7.

SECT. 12. If no selectmen be present, two or three civil officers, or in their absence, military officers shall have the same power as fire wards.

Powers of other officers, in their absence. 1821, 132, § 7.

SECT. 13. During the continuance of any fire, said fire wards or other officers shall have power to require assistance, in extinguishing the fire, and removing merchandize and furniture, and to appoint guards, to secure the same; and aid in pulling down or demolishing buildings, and suppressing disorder and tumult; and generally to direct all operations to prevent further destruction or damage.

Powers of firewards, during fires. 1821, 132, § 7.



## CHAP. 33.

Penalty, for refusing obedience.

1821, 132, § 7.

Compensation to owners of buildings demolished, whereby fire is stopped.

1821, 132, § 8.

Persons dissatisfied, may apply to the county commissioners.

1821, 132, § 8.

No compensation to the owner of the building, where the fire originated.

1821, 132, § 8.

Punishment, for plundering at fires.

1821, 132, § 9.

Sail makers, riggers and others, in maritime towns.

1821, 132, § 10.

Penalty, for violation by livery stable keepers.

1821, 132, § 10.

Appropriation of penalties.

1821, 132, § 11.

Engine men, excused from serving as jurors.

1821, 132, § 12.

Limitation of the foregoing regulations.

SECT. 14. Any person, refusing to assist, or to obey orders given by such fire wards or officers in the premises, shall forfeit and pay the sum of ten dollars.

SECT. 15. If the pulling down or demolishing any house or building shall be the means of stopping the fire, or if the fire be stopped before it shall come to the same, then every owner of such house or building shall receive a reasonable compensation from the town, in which the fire shall be; and the qualified voters in such town shall grant such sum, as may be necessary, for the purpose of such compensation; and the assessors shall assess the same.

SECT. 16. Any person, considering himself aggrieved by the doings of the town, selectmen or assessors, in estimating, voting or assessing the same, may apply to the county commissioners at their next meeting; and they shall have power, after due notice, given to the selectmen of such town, to confirm the doings aforesaid, or alter the same as they shall judge proper, and award costs to either party, as the decision may be; and the sum so assessed, according to said decision, shall be forthwith committed and collected.

SECT. 17. When it shall be adjudged, as aforesaid, proper, that the house or building, where the fire shall begin and break out, shall be pulled down or demolished to prevent the further increase and spreading of the fire, then the owner of such building shall receive no compensation for the same.

SECT. 18. If at any fire, any person shall plunder, steal, embezzle, convey away, or conceal any furniture, or goods and merchandize, belonging to the owner or occupant of any house or building, then on fire, or being in immediate danger, or placed there by any other person, while the owner of the same and others are lawfully removing the same, and shall not restore the same, or give notice of them to the owner or one of the firewards, the person so offending, and being convicted thereof, shall be deemed guilty of larceny, and punished accordingly.

SECT. 19. No person shall occupy any building or tenement, in any maritime town, for the business of a sail maker or rigger, or keeper of a livery stable, except only in such part of the town or city, as the selectmen, or mayor and aldermen, shall allow and direct; and any sail maker or rigger, who shall offend against this section, shall forfeit and pay, for such offence, ten dollars per month.

SECT. 20. Any keeper of a livery stable, who shall so offend, shall forfeit and pay, for such offence, fifty dollars for every month, so occupying the same; and so in proportion for a shorter or longer time.

SECT. 21. The said penalties shall be appropriated, two thirds to the use of the town where the offence is committed, and the other to him, who shall sue for the same, with costs.

SECT. 22. All persons, attached to any engine, shall be excused from serving as jurors in any court, unless the towns, to which they respectively belong, shall otherwise decide.

SECT. 23. Nothing in this chapter shall be construed to control the manner in which any officers of the fire department are appointed in any city, town or district, under the provisions of any existing laws, specially applicable thereto.

## CHAPTER 34.

CHAP. 34.

## OF THE SAFE KEEPING OF GUN POWDER, AND PREVENTION OF FIRE.

- SECT. 1. Selectmen, to make regulations respecting gun powder.
- SECT. 5. Power of selectmen to search for gun powder.
2. Penalty for violation of them.
6. Stove pipes to be kept in order.
3. Gun powder may be seized and libeled.
7. Appropriation of fines.
4. Persons, injured by explosion, may recover damages.
8. Publication of town regulations.

SECTION 1. In every town, the selectmen are authorized to make regulations, in conformity to which, all gun powder within the town shall be kept, or transported from place to place; and no person shall keep in such town any gun powder in any other quantity or manner, than is prescribed in such regulations.

Selectmen may make regulations, respecting gun powder. 1821, 25, § 1.

SECT. 2. Whoever shall violate any of the provisions of the preceding section, shall forfeit a sum, not less than twenty dollars, nor more than one hundred dollars, for each offence.

Penalty for violation of them. 1821, 25, § 2.

SECT. 3. All gun powder, kept in any town contrary to said provisions, may be seized by any of the selectmen of the town, as forfeited; and, within twenty days after such seizure, be libeled, and such proceedings be had upon such libel, as are prescribed by law.

Gun powder may be seized and libeled. 1821, 25, § 3.

SECT. 4. Any person injured, by the explosion of gun powder in possession of any person in any town, contrary to the regulations established therein as aforesaid, may have an action for damages against the person, having custody or possession of the same, at the time of the explosion, or against the owner of the same, if conusant of such neglect.

Persons, injured by explosion, may recover damages. 1821, 25, § 4.

SECT. 5. Any selectman shall have authority to enter any building or other place, in his town, to search for gun powder, supposed to be concealed there, contrary to law; having first obtained a search warrant for the purpose, in due form.

Power of selectmen to search for gun powder. 1821, 25, § 5.

SECT. 6. When any stove pipe in any town shall be defective, or out of repair, or so placed as to endanger any other building by communicating fire thereto, the selectmen shall give notice, in writing, to the possessor of such stove, and if he shall unnecessarily neglect, for two days after such notice, to remove or repair the same effectually, he shall forfeit and pay a fine, not less than ten dollars, nor more than fifty dollars, to be recovered by an action of debt.

Stove pipes to be kept in order. 1821, 25, § 6.

SECT. 7. The fines and penalties above mentioned shall accrue, and one half to the town, in which the offence shall be committed, and the other half to him, who shall prosecute for the same.

Appropriation of fines. 1821, 25, § 7.

SECT. 8. The rules and regulations, which shall be established in any town, according to the provisions of this chapter, shall not be in force, till they shall have been published by the selectmen of such town, three weeks successively, in a newspaper in the county, or by posting up attested copies of them in three public places in such town.

Publication of town regulations. 1821, 25, § 8.

## CHAPTER 35.

## OF GAMING FOR MONEY OR OTHER PROPERTY.

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| <p>SECT. 1. Remedy for persons, losing by gaming.</p> <p>2. If loser do not prosecute in three months, any other person may.</p> <p>3. Testimony of the parties in the cause.</p> <p>4. Forfeiture, for winning three dollars or more.</p> | <p>SECT. 5. Securities, given in such cases, to be void.</p> <p>6. Penalty for gaming at public houses.</p> <p>7. Penalty, for keeping a house, resorted to for gaming.</p> <p>8. Penalty, for gaming in such house.</p> |
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Remedy for persons, losing by gaming. 1821, 18, § 2.

SECTION 1. If any person shall, by playing at cards, dice or any other game, or by betting on the sides or hands of those, who are gaming, lose, to any person so playing or betting, any sum of money, or any goods whatever, and shall pay or deliver the same, or any part thereof, to the person winning, the person, so losing and paying or delivering the same, may sue for and recover such money, in an action for money had and received; and such goods, in an action of trover, or a special action on the case therefor, to be brought in three months.

If loser do not prosecute in three months, any other person may. 1821, 18, § 2.

SECT. 2. If the person, so losing said money or goods, shall not, within three months after such loss, without covin or collusion, prosecute with effect for such money or goods, it shall be lawful for any other person to sue for, and recover, against such winner, treble the value of such money or goods, with costs of suit, in an action under the provisions of this chapter; one moiety to the use of the person, so prosecuting, and the other moiety to the use of the town.

Testimony of the parties in the cause. 1821, 18, § 4.

SECT. 3. In any action brought, as provided in the first section, and for the purpose therein stated, if the plaintiff shall offer to make oath, that the money or the goods for which the action is brought, were lost by gaming with the defendant, as alleged in the declaration, the court shall render judgment, that the plaintiff recover damages to the amount of such money or goods, unless the defendant will make oath, that he did not obtain the same or any part thereof by gaming; and if he shall so discharge himself, on oath, he shall recover of the plaintiff his costs; provided, that the plaintiff, at his election, may maintain and prosecute his action, in the usual course of proceedings in such actions, at common law.

Forfeiture, for winning three dollars or more. 1821, 18, § 3.

SECT. 4. Whoever shall be convicted, on indictment, of winning, at any one time or sitting, by gaming or by betting on the hands or sides of such as are gaming, any money or goods to the value of three dollars or more, and of receiving the same or security therefor, shall forfeit to the use of the town, where the offence was committed, double the value of the property, so won and received; provided the indictment shall be found within six months after the commission of the offence.

Securities, given in such cases, to be void. 1821, 18, § 1.

SECT. 5. All notes, bills, bonds, mortgages or other securities or conveyances whatever, in which the whole, or any part, of the consideration shall be for money or goods, won by gaming or playing at cards, dice or any other game, or by betting on the hands or sides of those, who are gaming, or for reimbursing or repaying any

money knowingly lent or advanced for any gaming or betting, or lent and advanced at the time and place of such gaming and betting, shall be void and of no effect, as between the parties to the same, and all other persons, except such as hold and claim under them in good faith, and without notice of the illegality of the consideration of such contract or conveyance.

SECT. 6. If any person shall play at cards, dice or billiards or with any other implements used in gaming, in any tavern or house of entertainment, or place licensed for retailing spirituous liquors, or in any of the out houses, yards, gardens or appendages of the same, or shall, in any of the houses, or licensed places aforesaid, expose to view any of such implements, or shall be seen sitting at any table therein, with any of such implements before him, and shall be convicted thereof, before any justice of the peace, or the district court on indictment, the person so offending shall forfeit and pay a fine, not less than one, nor more than ten dollars, to the use of the town where the offence was committed.

Penalty for gaming at public houses. 1821, 18, § 5.

SECT. 7. If any person, or agent of any corporation, shall keep a house, shop or other place, resorted to for the purpose of gaming, or permit any person, in any house, shop or place under his control or care, to play at cards, dice, billiards or other game for money or other things, such person or corporation shall pay a fine of not less than twenty dollars, nor more than one hundred dollars; to be recovered on indictment, in the district court, for the prosecutor's use.

Penalty, for keeping a house, resorted to for gaming. 1836, 221, § 1.

SECT. 8. If any person shall, for money or other thing, there play at any of the games before named, or bet on any person, so playing, he shall pay a fine of not less than one dollar, nor more than twenty dollars; to be recovered on complaint before a justice of the peace, or before the district court, on indictment, to the use before mentioned.

Penalty, for gaming in such house. 1836, 221, § 2.

## CHAPTER 36.

### OF INNOLDERS, COMMON VICTUALERS AND RETAILERS OF SPIRIT- UOUS LIQUORS.

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| <p>SECT. 1. Licenses, when, and by whom granted.</p> <p>2. Persons licensed, to give bond.</p> <p>3. Licenses for part of a year, in certain cases.</p> <p>4. Fee for license.</p> <p>5. Duty of innholders, to provide entertainment.</p> <p>6. Duties of common victualers.</p> <p>7. Innholders and victualers, to keep up signs.</p> <p>8. Not to allow gaming.</p> <p>9. Penalty, for persons gaming.</p> <p>10. Reveling and tippling prohibited.</p> | <p>SECT. 11. Liquors, not to be furnished to United States' soldiers.</p> <p>12. Liquors, not to be furnished to indians.</p> <p>13. Selectmen may prohibit sale of liquors, to idlers and spendthrifts.</p> <p>14. Penalty, for violating such prohibition.</p> <p>15. Selectmen, &amp;c. to revoke licenses of offenders, and to prosecute for breach of bond.</p> <p>16. Provisions, extended to cities and plantations.</p> <p>17. Penalty, for being an innholder or retailer, without license.</p> |
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<b>CHAP. 36.</b>	SECT. 18. Penalty, for selling liquors in particular, without license. 19. Recovery of fines, under twenty dollars. 20. Recovery of fines, exceeding twenty dollars.	SECT. 21. Duty of municipal officers, to prosecute. 22. Process not to be discontinued, without leave of court. 23. Licenses heretofore granted, valid.
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Licenses, when and by whom granted.  
1834, 141, § 2.

**SECTION 1.** The selectmen, treasurer and clerk of every town, shall, annually, meet on the first Monday of May, or on the succeeding day, or both, and, at such time and place, in said town, as the selectmen may appoint, by posting up notices in two or more public places therein, at least seven days previously, stating the purpose of the meeting; and, at such meeting, may license under their hands, as many persons of good moral character, and under such restrictions and regulations, as they may deem necessary, to be innholders, victualers or retailers of wine, brandy, rum or other strong liquors in said town, until the day succeeding the first Monday in May, of the next following year, in such house or other building, as the license may specify.

Licensed persons, to give bond.  
1834, 141, § 2.

**SECT. 2.** No person shall be entitled to receive his license, until he shall have given his bond to the said treasurer, to the acceptance of the board granting the same, with one or more sureties, in the penal sum of three hundred dollars, in substance as follows, viz:

“Know all men, that we, ———, as principal, and ———, as sureties, are holden, and stand firmly bound to ——— treasurer of the town of ———, in the sum of three hundred dollars, to be paid to him, or his successor in said office; to the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals. Dated the ——— day of ———, in the year 18—. The condition of this obligation is such, that whereas the above bounden ——— has been duly licensed, as a ——— within the said town of ———, until the day succeeding the first Monday of May next; now if the said ——— shall, in all respects, conform to the provisions of the law, relating to the business for which he is licensed, and to such rules and regulations, as have been provided by the board granting his license, in reference thereto, then this obligation shall be void, otherwise shall remain in full force.”

16 Maine, 121.

Licenses for part of a year, in certain cases.  
1834, 141, § 2.

**SECT. 3.** The said selectmen, treasurer and town clerk, may, at any other time, at a meeting, specially called and notified as aforesaid, for the consideration of any application therefor to them made, grant such license on the like conditions; but all such licenses shall expire on the day mentioned in the first section.

Fee for license.  
1834, 141, § 2.

**SECT. 4.** Every person licensed shall pay to the treasurer, for the use of the board granting the license, one dollar; and the clerk shall make a record of all the licenses granted.

Duty of innholders, to provide entertainment.  
1834, 141, § 3.

**SECT. 5.** Every innholder shall, at all times, be furnished with suitable provisions and lodging for strangers and travelers, and with stable room, hay and provender for their horses and cattle; and with pasturing, if required by the terms of his license; and it shall be his duty to grant such reasonable accommodations, as occasion may require, to strangers, travelers and others.

Duties of com-

**SECT. 6.** Every common victualer shall have all the rights and

privileges, and be subject to all the duties and obligations of an innholder, excepting, that he shall not be required to furnish lodging for travelers, nor stable room, hay or provender for cattle.

SECT. 7. Every innholder and common victualer shall, at all times, have a board or sign affixed to his house, shop, cellar or store, or in some conspicuous place near the same, with his name, at large, thereon, and the employment, for which he is licensed.

SECT. 8. No innholder, common victualer or retailer shall have or keep about his house, shop, or other buildings, yards, gardens or dependencies, any dice, cards, bowls, billiards, quoits or other implements, used in gaming; nor shall suffer any person, resorting thither, to use or exercise any of said games or any other unlawful game or sport, within his said premises.

SECT. 9. Every person, who shall use or exercise any such game or sport, in any place prohibited by the preceding section, shall forfeit five dollars.

SECT. 10. No innholder, common victualer, or retailer of strong liquors, shall suffer any reveling, riotous or disorderly conduct in his house, shop or other dependencies; nor shall suffer any person to drink to drunkenness or excess therein; nor suffer any minor or servant, except travelers, to have any strong drink there.

SECT. 11. No innholder, common victualer or retailer of strong liquors, shall sell or furnish to any non commissioned officer or soldier in the service of the United States, knowing him to be such, any spirituous liquors, or any liquors, part of which are spirituous, within five miles of any fort, barracks or military post, nor beyond that distance, if on duty, without a permit from the commanding officer of the corps, to which such officer or soldier may belong; provided, such commanding officer shall cause to be posted, in the office of the town or plantation clerk, where such innholder, victualer or retailer resides, a list of the names of the non commissioned officers and soldiers belonging to his corps.

SECT. 12. No innholder, victualer or retailer shall sell, give, or in any manner furnish, to any indian, any wine, rum or other spirituous liquors, or any liquors part of which are spirituous, unless in case of sickness, and then only under the direction of a regular practising physician.

SECT. 13. Whenever any person shall, by idleness or excessive drinking of spirituous liquors, so misspend, waste, or lessen his estate, as thereby either to expose himself, or his family, to want, or the town to which he belongs, to expense for the maintenance of him or his family, or shall so habitually indulge himself in the use of spirituous liquors, as thereby greatly to injure his health, or endanger the loss thereof, the selectmen of the town, in which such person lives, shall in writing under their hands, forbid all licensed innholders, common victualers and retailers of the same town, to sell to him any spirituous or strong liquors for the term of one year; and they may in like manner forbid licensed persons in any other town, to which it may be probable such misspender of time and estate may resort for the same; and the selectmen may renew such prohibitions, from year to year, until they shall be satisfied that the person, to whom they relate, shall have reformed; and all such

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mon victualers. 1 Fairf. 438. 16 Maine, 121. Innholders and victualers, to keep up signs. 1831, 141, § 3.

Not to allow gaming. 1834, 141, § 4. 3 Pick. 231, 300. 4 Pick. 251.

Penalty, for persons gaming. 1831, 141, § 4.

Reveling and tipping prohibited. 1834, 141, § 5.

Liquors, not to be furnished to soldiers of the United States. 1823, 423.

Liquors, not to be furnished to indians. 1830, 482, § 3.

Selectmen may prohibit sale of liquors, to idlers and spend-thrifts. 1834, 141, § 7.

**CHAP. 36.** prohibitions shall be binding upon the licensed persons, to whom they shall be communicated.

Penalty, for violating such prohibition.  
1831, 141, § 9.

**SECT. 14.** If, during the continuance of any such prohibition, as is provided in the preceding section, any person, whatever, having knowledge thereof, shall purchase, procure or sell any spirituous or strong liquors, to or for the use of any person, who is the subject of such prohibition, he shall forfeit ten dollars.

Selectmen, &c. to revoke licenses of offenders, and to prosecute for breach of bond.  
1834, 141, § 8.

**SECT. 15.** The selectmen, treasurer and clerk of every town shall, whenever any instance of a breach of the condition of the bond, described in the second section of this chapter, by any licensed innholder, victualer or retailer, shall have come to their knowledge, and after complaint, notice to the party complained of, and a hearing thereon, revoke and make void his license; they shall also, at the expense and for the use of the town, cause his bond to be put in suit, in any court proper to try the same.

Provisions, extended to cities and plantations.

**SECT. 16.** All the preceding provisions of this chapter, relating to towns and their treasurers and clerks, shall be applicable to cities and plantations and the treasurers and clerks thereof; and those, relating to selectmen, shall also be applied to the mayor and aldermen of cities, and the assessors of plantations.

Penalty, for being an innholder or retailer, without license.  
1834, 141, § 1.  
6 Greenl. 412.  
9 Pick. 165.  
13 Pick. 359.  
16 Maine, 241.

**SECT. 17.** No person shall be allowed to be a common victualer, innholder or seller of wine, brandy, rum or any strong liquors, by retail or in a less quantity than twenty eight gallons, and that delivered and carried away all at one time, except such person be duly authorized therefor, and have given bond therefor, pursuant to the provisions of this chapter; on pain of forfeiting not less than fifty, nor more than three hundred dollars.

Penalty, for selling liquors in particular, without license.  
1834, 141, § 1.

**SECT. 18.** If any person, not being licensed, and under bonds as aforesaid, shall at any time sell any spirituous liquors, or any mixed liquors, part of which is spirituous, he shall forfeit and pay, for each offence, not less than ten dollars.

Recovery of fines, under twenty dollars.  
1834, 141, § 10.  
1835, 193, § 1.  
3 Fairf. 204.  
13 Maine, 307.  
15 Maine, 473.

**SECT. 19.** Any fine, forfeiture or penalty, not exceeding twenty dollars, arising from any of the offences aforesaid, may be recovered by an action of debt, or by complaint, before any justice of the peace for the county where the offence was committed; or the action may be brought in the name of the said town; and, in either case, the whole penalty shall enure to the town.

Recovery of fines, exceeding twenty dollars.  
1834, 141, § 10.  
1835, 193, § 1.

**SECT. 20.** All fines, forfeitures or penalties, exceeding twenty dollars, may be recovered before any court of competent jurisdiction, by an action of debt, in the name of the person prosecuting, or of the town or plantation, where the offence may have been committed, or by indictment; and the whole forfeiture, so recovered, and also the forfeiture of any bond, given pursuant to the second section of this chapter, shall, when recovered, enure to the sole use of such town or plantation.

Duty of municipal officers, to prosecute.  
1834, 141, § 10.  
1835, 193, § 1.

**SECT. 21.** It shall be the duty of the mayor and aldermen of cities, selectmen of towns, and assessors of plantations, and of the treasurers and clerks thereof, respectively, to prosecute every person, who, without being duly licensed, shall be an innholder, common victualer, or retailer of spirituous liquors, on obtaining evidence thereof; or any person, who shall otherwise violate the provisions of this chapter, within their city, town or plantation.

SECT. 22. No prosecuting officer shall discontinue any legal process commenced, or to be commenced, under the provisions of this chapter, except by direction of the court, before which the same may be pending.

SECT. 23. All licenses heretofore granted shall retain the same validity, according to the conditions thereof, as if this chapter had not been enacted.

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Process not to be discontinued, without leave of court. 1835, 193, § 1. Licenses heretofore granted, valid.

CHAPTER 37.

OF PREVENTING ABUSES IN DISTILLING STRONG LIQUORS.

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| SECT. 1. Leaden worms or pipes, prohibited. | SECT. 4. Powers of assay masters. |
| 2. Not to be made of base pewter.           | 5. Recovery of forfeitures.       |
| 3. Assay masters, and their duties.         |                                   |

SECTION 1. No person shall distil or draw off any spirit or strong liquors, through leaden heads, worms or pipes.

Leaden worms or pipes, prohibited. 1821, 29, § 1.

SECT. 2. No brazier, pewterer, or other artificer, shall make any worm or head for distilling, of coarse and base pewter, or such as has any mixture of lead in it.

Not to be made of base pewter. 1821, 29, § 2.

SECT. 3. Every town, in which the distilling trade is carried on, may at the annual meeting thereof, choose two or more assay masters, who shall be duly sworn, and whose business it shall be to inspect and try such heads and worms, as they may suspect to be illegally made; and if found to be made of lead or other base metal, on trial, they shall give notice thereof to the distiller; and he shall not make any further use of them in distilling.

Assay masters, and their duties. 1821, 29, § 3.

SECT. 4. Assay masters or inspectors, chosen as aforesaid, are empowered to enter into any still house, or place where suspected utensils are used or kept, and cut off so much, as may be needful to make the assay; and every distiller shall be bound to produce a certificate from the assay master for the time being, for all pewter heads and worms, which they use for distilling, that they have been tried, approved and marked; for marking which a stamp shall be prepared by the town; for which certificate, they shall be allowed by the distiller or owner of the heads and worms, one dollar; and such certificate shall be entered in the town clerk's books; whose fee therefor shall be ten cents.

Powers of assay masters. 1821, 29, § 4.

SECT. 5. Any of the persons, mentioned in the first, second or third section, who shall neglect to perform the duties required of them, or who shall violate any of the prohibitions in either of said sections, shall forfeit the sum of three hundred dollars; one half to the town, where the offence is committed, and the other half to the person, who shall inform and sue for the same.

Recovery of forfeitures. 1821, 29, § 1, 2, 4.



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CHAPTER 38.

OF RECORDING BIRTHS AND DEATHS.

- SECT. 1. Town clerks, to record births and deaths.
- SECT. 2. Parents and others, to notify such clerks.
- 3. Penalties for neglect.

Town clerk, to record births and deaths. 1821, 136, § 1.

SECTION. 1. Every town and plantation clerk shall record all births and deaths, which shall occur in the town or plantation, of which he is clerk, and come to his knowledge; stating the time when each such event took place, and the names of the parents, if known; for the fees allowed by law, to be paid by such town or plantation.

Parents and others, to notify such clerks. 1821, 136, § 2.

SECT. 2. It shall be the duty of parents, house holders, masters of work houses, alms houses and prisons, and vessels, to give notice to the clerk of the town, in which they respectively reside, of the births and deaths, which take place in the respective families, houses, or vessels, in which such event may occur; and also the duty of the elder person, next of kin, to give like notice of the death of his kindred.

Penalties for neglect. 1821, 136, § 2.

SECT. 3. Any person, neglecting to perform the duty required of him in this chapter, for the space of six months, shall forfeit and pay one dollar for each offence; to be recovered on complaint, to the use of such town.

CHAPTER 39.

OF PUBLIC SHOWS AND EXHIBITIONS.

- SECT. 1. Penalty for exhibiting pageantry, shows or tricks, without license.
- 2. Licenses, how granted.
- SECT. 3. Museums excepted.
- 4. Who shall prosecute.
- 5. Mode of recovery.

Penalty for exhibiting pageantry, shows or tricks, without license. 1824, 266, § 1. 1833, 70, § 1

SECTION 1. If any person shall, for money or other valuable article, in any city, town or plantation, in this state, exhibit any images or pageantry, sleight of hand tricks, puppet show or circus or any feats of balancing, wire dancing, personal agility, sleight of dexterity, without a license therefor, as hereinafter provided, he shall forfeit and pay, for every such offence, a sum not exceeding one hundred dollars, nor less than ten dollars.

Licenses, how granted. 1833, 70, § 2. 9 Pick. 415.

SECT. 2. The mayor of any city, the selectmen of any town and the assessors of any plantation, may grant license for any of the foregoing exhibitions or performances therein, on receiving for the use thereof, such sum as they may deem proper, but not less than five dollars for every such exhibition; twenty four hours being allowed for the same.

Museums excepted. 1833, 70, § 2. Who shall prosecute. 1833, 70, § 3.

SECT. 3. Nothing in this chapter shall be construed, to extend to any permanently established museum.

SECT. 4. It shall be the duty of the mayor of any city, of the selectmen of any town, and the assessors of any plantation, to

prosecute in the name of such corporation, all persons violating any of the provisions of this chapter. CHAP. 40.

SECT. 5. All such fines shall be recovered in an action of debt, and for the use of such city, town or plantation. Mode of recovery.

## CHAPTER 40.

### OF MISCHIEVOUS DOGS.

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| <p>SECT. 1. Owners of dogs, liable for damages, done by them.</p> <p>2. Person assaulted by a dog, may kill him.</p> <p>3. Penalty, if owner do not confine a mischievous dog.</p> | <p>SECT. 4. If at large, after complaint, dog may be killed.</p> <p>5. Treble damages may be recovered, for mischief done after notice.</p> |
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SECTION 1. When any dog shall do any damage to the person or property of another, the owner or keeper of such dog, and also the parent, guardian, master or mistress of any minor or servant, who shall own or keep such dog, shall forfeit and pay to the injured person, double the amount of the damage done; to be recovered by action of trespass. Owners of dogs, liable for damages, done by them. 1821, 174, § 1. 20 Pick. 477.

SECT. 2. Any person may lawfully kill any dog, that shall suddenly assault him or any other person, when peaceably walking or riding, out of the inclosure of the owner; or any dog found out of the inclosure, or immediate care of the owner, worrying, wounding or killing, any cattle, sheep, lambs or other domestic animals. Person assaulted by a dog, may kill him. 1821, 174, § 2.

SECT. 3. If any person shall be so assaulted, or if any dog shall be strolling out of the inclosure or immediate care of its owner or keeper, by day or night, and the person so finding such dog, shall within forty eight hours after such assault or finding, make oath before a justice of the peace of the same county, that he really suspects such dog, to be a dangerous or mischievous dog, and shall give notice to the owner or keeper by giving him a copy of such oath, signed by such justice, the owner or keeper shall kill such dog, or confine him forthwith: and if he neglects so to do, for twenty four hours, he shall forfeit and pay five dollars to any person who shall sue for the same. Penalty, if owner do not confine a mischievous dog. 1821, 174, § 3.

SECT. 4. If such dog shall not be so killed or confined, but be again at large, and out of the care of the owner or keeper, any person may lawfully kill such dog. If at large, after complaint, dog may be killed. 1821, 174, § 4.

SECT. 5. If any dog, after notice given as aforesaid, wound any person by a sudden assault as aforesaid, or wound or kill any cattle, sheep, lambs, or other domestic animals, the owner or keeper shall be liable to pay the person injured, treble damages and costs; to be recovered before the proper court of the county. Treble damages may be recovered, for damages done after notice. 1821, 174, § 5.

CHAP. 41.

**CHAPTER 41.**

OF DESTRUCTION OF MOOSE AND DEER.

1830, 471.

Any person, who shall kill any moose or deer, between the first day of July and the first day of November in any year, shall forfeit and pay for every moose or deer, so killed, the sum of five dollars; one moiety to the use of the county, in which the offence may be committed, and the other moiety for the use of the person, who shall sue for the same, within six months, next after the commission of the offence, and not afterwards.

**CHAPTER 42.**

OF THE DESTRUCTION OF WOLVES AND BEARS.

SECT. 1. Bounties for heads of wolves and bears.	SECT. 2. Payments, to be refunded from state treasury.
	3. Heads to be destroyed.

Bounties for heads of wolves and bears. 1837, 261, § 1.

SECTION 1. Any person, who shall deliver, to the treasurer of any town or plantation, the head of any wolf or bear, which shall be killed in this state, and shall make oath before any justice of the peace in the county, where the same was killed, that the said wolf or bear was killed within this state, after this chapter had become a law, and that the head so presented is the head of a wolf or bear, as the case may be, and shall present such affidavit with the said head to such treasurer, [he] shall be entitled to receive from the treasurer, ten dollars for the head of each wolf, and two dollars for the head of each bear.

Payments, to be refunded by the state. 1837, 261, § 1.

SECT. 2. The amount, so paid by such town or plantation, shall be allowed and paid to him by the state treasurer, on presentment of the account of such town or plantation treasurer, verified by his oath or affirmation.

Heads to be destroyed. 1837, 261, § 1.

SECT. 3. Every town or plantation treasurer, who shall receive the head of any wolf or bear, as aforesaid, shall immediately destroy the same; and he shall preserve all affidavits received by him.

**TITLE FOURTH.****Regulations connected with trade.**

- CHAPTER 43.** Of principal, factors and agents.
44. Of notaries public.
  45. Of limited partnerships.
  46. Of sales of property by licensed auctioneers.
  47. Of pilotage, ship owners and charterers.
  48. Of boats and lighters, and protection of harbors.
  49. Of wrecks and shipwrecked goods.
  50. Of the inspection of beef and pork.
  51. Of lime and lime casks.
  52. Of pot and pearl ashes.
  53. Of inspection of butter and lard.
  54. Of inspection of fish.
  55. Of manufacture of nails.
  56. Of tobacco and onions.
  57. Of exportation of flax seed.
  58. Of hops for exportation.
  59. Of packing clams.
  60. Of fire wood, bark and coal.
  61. Of fisheries.
  62. Of proof of fire arms.
  63. Of packing and selling paper.
  64. Of fraud in pressing hay.
  65. Of sole leather, boots and shoes.
  66. Of the survey and inspection of shingles, clapboards, hoops and staves, boards and other lumber, and the admeasurement of logs.
  67. Of timber upon rivers and streams, and on adjacent lands.
  68. Of the culture of silk.
  69. Of usury.
  70. Of standard weight of potatoes.
  71. Of measurers of salt and grain.
  72. Of the standard weight of ruta бага, sugar beet and mangel wurzel, and rye and indian meal.
  73. Of weights and measures.
  74. Of the prevention of fraud in the sale of oils.
  75. Of hawkers and pedlers.

**CHAPTER 43.****OF PRINCIPAL, FACTORS AND AGENTS.**

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| <p><b>SECT. 1.</b> Who shall be deemed owner of goods shipped, as to the consignee.</p> <p>2. How far a factor, or agent, may be considered owner.</p> <p>3. Not to extend to antecedent demands against the agent.</p> | <p><b>SECT. 4.</b> Rights of the true owner in such cases.</p> <p>5. Exception, as to common carriers and warehouse keepers.</p> |
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**SECTION 1.** Every person, in whose name any merchandize shall be shipped, shall be deemed the true owner thereof, so far as to entitle the consignee of such merchandize to a lien thereon, for any moneys advanced or negotiable security given, by such consignee, to and for the use of the person, in whose name such ship-

Who shall be deemed owner of goods shipped, as to the consignee. 1834, 117, § 1.

**CHAP. 43.** ment shall have been made, and for any money or negotiable security received by the person, in whose name the shipment shall have been made, to and for the use of any such consignee.

How far a factor, or agent, may be considered owner. 1834, 117, § 2.

**SECT. 2.** Every factor or agent, entrusted with the possession of any bill of lading, custom house permit, or ware house keeper's receipt, for the delivery of any such merchandize, and every such factor or agent, not having the documentary evidence of title, who shall be entrusted with the possession of any merchandize for the purpose of sale, or as a security for any advances to be made, or obtained, thereon, shall be deemed to be the true owner thereof, so far as to give validity to any contract, made by such agent with any other person, for the sale or disposition of the whole, or any part of such merchandize, any money advanced, or negotiable instrument, or any other obligation in writing, given by such person upon the faith thereof.

Not to extend to antecedent demands against the agent. 1834, 117, § 3.

**SECT. 3.** Every person, who shall accept, or take, such merchandize in deposit from such agent, as security for any antecedent debt or demand, shall not acquire thereby, or enforce, any right or interest in, or to, such merchandize or document, other than was possessed, or might have been enforced by such agent, at the time of such deposit.

Rights of the true owner in such cases. 1834, 117, § 4.

**SECT. 4.** Nothing in the preceding sections of this chapter shall be construed to prevent the true owner of any merchandize, so deposited, from demanding and receiving the same, upon repayment of the money advanced, or on restoration of the security given, on the deposit of such merchandize, and upon satisfying such lien, as may exist thereon in favor of the agent, who may have deposited the same; nor from recovering any balance remaining in the hands of the person, with whom such merchandize shall have been deposited, as the produce of the sale thereof, after satisfying the amount justly due to such person by reason of such deposit, and also after having satisfied all just expenses, arising on such merchandize.

Exception, as to common carriers and ware-house keepers. 1834, 117, § 5.

**SECT. 5.** Nothing in this chapter shall authorize a common carrier, ware house keeper, or other person, to whom merchandize or other property may be committed for transportation or storage, to sell or hypothecate the same.

## CHAPTER 44.

### OF NOTARIES PUBLIC.

**SECT. 1, 2.** Of the tenure of office, and oath.

3. Seal.

4, 5. Notary's general duty, as to protests.

6. Of the notary's records.

7. When he vacates his office, records to be deposited with the clerk of the judicial courts.

8. In case of his death, executor to deposit them.

**SECT. 9.** Penalty for destroying, defacing, or concealing such records.

10. Duties of clerks, relating thereto.

11. Forfeitures appropriated.

12. How far certificate of protest, evidence.

13. Of days of grace on bills, notes, &c.

14. Proviso relating to the fourth of July. Notary's fees.

**SECTION 1.** All notaries public shall be appointed and commissioned in the manner, and for the term prescribed in the constitution, and shall be duly sworn and qualified, before entering upon the discharge of their duties. **CHAP. 44.**  
Of the tenure of office, and oath.

**SECT. 2.** All notaries public, now in office, shall continue to hold their offices according to their respective commissions. Same subject.

**SECT. 3.** Every notary public shall constantly keep a seal of office, whereon shall be engraven his name, and the words "notary public" and "Maine," with the arms of the state, or such other device as he may choose. Seal.  
1821, 101, § 1.

**SECT. 4.** It shall be his duty, when requested, to enter on record all losses or damages, sustained, or apprehended, by sea or land, and also all averages, and such other matters, as, by mercantile usage, appertain to his office; and cause protest thereof to be made, duly and formally. Notary's general duty, as to protests.  
1821, 101, § 2.

**SECT. 5.** All facts, extracts from documents, and circumstances, so noted, shall be signed and sworn to, by all the persons appearing to protest; and he shall note, extend and record the protest so made; and shall grant authenticated copies thereof, under his signature and notarial seal, to those, who request and pay for the same. He may also, in behalf of any person interested, present any bill of exchange, or other negotiable paper, for acceptance or payment, to any party, on whom the same is drawn, or who may be liable therefor; and notify all endorsers, or other parties, to such bill or paper; may record and certify all contracts, usually recorded or certified by such notaries, take depositions in the same manner that any justice of the peace and quorum may legally do; grant warrants of survey on vessels, certify country products, and, in general, do all acts to be done by notaries public by the usages of merchants, and authorized by the laws of the state. Same subject.  
1821, 101, § 2, 3, 4.  
15 Maine, 452.  
16 Maine, 41.

**SECT. 6.** Every notary public shall record at length in a book of records, all acts, protests, depositions, and other things, by him noted or done in his official capacity; and all copies or certificates, by him granted, shall be under his hand and notarial seal, and shall be received as evidence of such transaction. Of the notary's records.  
1821, 101, § 3, 5.

**SECT. 7.** On the resignation, or removal from office, of any notary public, his records shall be deposited with the clerk of the judicial courts in the county, for which he was appointed; and by a neglect for three months to comply with the above requisition, such notary shall forfeit not less than fifty, nor more than five hundred dollars. When he vacates his office, records to be deposited with the clerk of the judicial courts.  
1821, 101, § 6.

**SECT. 8.** If any executor or administrator of such notary shall neglect, for three months after his acceptance of said trust, to deposit all such records and papers, as shall come to his hands, he shall forfeit not less than fifty dollars, nor more than five hundred. In case of his death, executor to deposit them.  
1821, 101, § 6.

**SECT. 9.** If any person shall knowingly destroy, or deface, or conceal any such records, he shall forfeit and pay not less than two hundred, nor more than one thousand dollars, and shall be liable for damages to any person injured, in an action on the case. Penalty for destroying, defacing, or concealing such records.  
1821, 101, § 6.

**SECT. 10.** It shall be the duty of all clerks to receive and safely keep all such records and papers, lodged in their respective offices, and to give attested copies of the same; for which they shall be Duties of clerks, relating thereto.  
1821, 101, § 7.  
16 Maine, 181.

**CHAP. 44.**

Forfeitures appropriated.  
1821, 101, § 7.  
14 Maine, 99.

How far certificate of protest, evidence.  
1821, 101, § 3.  
16 Maine, 41,  
246, 259.

Of days of grace on bills, notes, &c.  
1824, 272.  
1839, 386, § 1.  
13 Maine, 412.  
14 Maine, 99,  
284.  
21 Pick. 483.  
1 Metc. 43.

Proviso relating to the fourth of July.  
1824, 272, § 1.  
1839, 386, § 1.

Notary's fees.

allowed the same fees, as are allowed to a notary ; and such copies shall be as valid, as if they were certified by said notaries.

**SECT. 11.** All forfeitures before named shall be, one half to the state, and the other to him, who shall sue for the same.

**SECT. 12.** The protest of any foreign or inland bill of exchange, or promissory note or order, duly certified by any notary public, under his hand and official seal, shall be legal evidence of the facts stated in such protest, as to the same, and also as to the notice given to the drawer or endorser, in any court of law.

**SECT. 13.** Whenever any promissory note, inland bill of exchange, draft or order for the payment of money, payable at a future day, or at sight, and not on demand, shall become payable in this state, the maker of any such note, and the acceptor of any such bill of exchange, respectively, shall be entitled to a grace of three days, unless the third day happen to be the Lord's day, or a day of public fast or thanksgiving, appointed by the governor and council, or the fourth day of July ; in which excepted cases, a grace of two days only shall be allowed.

**SECT. 14.** If the fourth day of July should happen to be Monday, and the third day of grace on any such note, bill or draft should happen on the same day ; or if the fourth day of July should happen on Saturday, and the following Sunday should be the third day of grace, an additional day of grace shall be allowed on such note, bill or draft ; and for such protest, notifying parties, making the certificate in form aforesaid and record of his proceedings, he shall be entitled to a fee of one dollar and fifty cents, and no more.

**CHAPTER 45.****OF LIMITED PARTNERSHIPS.**

**SECT. 1.** To what kinds of business, applicable.

2. Of what persons to be composed.

3. Particulars to be stated in a certificate, to be signed by them.

4, 5. Certificate to be acknowledged and recorded.

6. Parties liable in case of any misstatement.

7, 8. Publication of such certificate.

9. Of the renewal of such partnerships.

10, 11. Special partners not to be named, nor to act.

12. None of the capital to be withdrawn.

**SECT. 13.** Special partners liable to refund moneys withdrawn, or divided.

14. Of general assignments by such partnerships.

15. Assent of creditors thereto to be presumed. Mode of notice.

16. In whose names suits may be brought.

17. Of voluntary dissolution within the term specified. Notice thereof.

18. Rights and obligations in cases, not specified, the same as in general partnerships.

To what kinds of business, applicable.  
1836, 211, § 1.

**SECTION 1.** Limited partnerships, for the transaction of mercantile, mechanical or manufacturing business, may be formed by two or more persons, upon the following conditions and liabilities, pro-

vided, that nothing in this chapter shall authorize such partnerships, CHAP. 45.  
for the purpose of banking or insurance.

**SECT. 2.** Such partnerships may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible, as general partners now are by law, and of one or more persons, who shall contribute a specific sum in actual cash payment, as capital, to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership, beyond the sum so contributed by him or them to such capital.

Of what persons to be composed.  
1836, 211, § 2.

**SECT. 3.** Persons forming such a partnership shall sign a certificate, which shall contain the following particulars:

Particulars to be stated in a certificate, to be signed by them.  
1836, 211, § 3.

*First.* The name or firm, under which such partnership shall be conducted.

*Secondly.* The name and place of residence of each one of the general partners.

*Thirdly.* The name and place of residence of each one of the special partners.

*Fourthly.* The amount of capital, which each one of the special partners has contributed to the common stock.

*Fifthly.* The general nature of the business to be transacted.

*Sixthly.* The time when the partnership shall commence.

*Seventhly.* The time when it shall terminate.

**SECT. 4.** Such partnership shall not be considered as formed, until such certificate shall have been acknowledged by all the parties, before a justice of the peace, and recorded in the registry of deeds of the county or district in which the principal place of the partnership business is situated, in a book to be kept for that purpose, open to public inspection.

Certificate to be acknowledged and recorded.  
1836, 211, § 4.

**SECT. 5.** If there be several established places of partnership business, a copy of said certificate, certified by the register of deeds, in whose office it is so recorded, shall be filed and recorded in like manner, in the office of the register of deeds, in every such county or district.

Same subject.  
1836, 211, § 4.

**SECT. 6.** If any statement shall be made in such certificate, which may mislead third persons, or be intentionally false, all the persons interested in such partnership shall be liable for all the engagements thereof, as general partners, to any person so deceived or injured.

Parties liable in case of any misstatement.  
1836, 211, § 4.

**SECT. 7.** After such registry, the partners shall cause a copy of the certificate above mentioned to be published in a newspaper, printed in the county, in which the principal place of business is situated; and if there is no such paper printed in that county, then one printed in an adjoining county, or in the newspaper published by the printer to the state, for six weeks successively, the first publication to be made within twenty days thereafter.

Publication of such certificate.  
1836, 211, § 5.

**SECT. 8.** If such certificate shall not be so published, the partnership shall be deemed a general one.

Same subject.  
1836, 211, § 5.

**SECT. 9.** Upon every renewal or continuance of such partnership, beyond the time originally fixed for its duration, a certificate shall be made, signed, acknowledged, recorded and published in the manner, provided at the original formation of such partnership;

Of the renewal of such partnerships.  
1836, 211, § 6.



**CHAP. 45.**

and any partnership, renewed or continued in any other manner, shall be deemed a general partnership.

Special partners not to be named, nor to act. 1836, 211, § 7.

**SECT. 10.** The business of the partnership shall be conducted under a firm, in which no names shall be used, but those of the general partners, without the word "company" or any other general term; and the general partners, only, shall transact business.

Same subject. 1836, 211, § 7.

**SECT. 11.** If the name of any special partner shall be used in the firm, with his consent and privity, or if he shall make any contract respecting the concerns of the partnership with any person, except the general partners, he shall be deemed and treated as a general partner, as to such contract.

None of the capital to be withdrawn. 1836, 211, § 8.

**SECT. 12.** During the continuance of any partnership, formed under the authority of this chapter, no part of the capital stock shall be withdrawn therefrom, nor any division of interest or profits be made, so as to reduce such capital stock below the sum, stated in the certificate above mentioned.

Special partners liable to refund moneys withdrawn, or divided. 1836, 211, § 8.

**SECT. 13.** If, during the continuance, or at the termination, of the partnership, the property shall not be sufficient to pay the partnership debts, then the special partners shall be severally answerable for all sums by them in any way received, withdrawn or divided, with interest thereon from the time they were so respectively withdrawn.

Of general assignments by such partnerships. 1836, 211, § 8.

**SECT. 14.** No general assignment by such partnership, in view of insolvency, or where their property is insufficient to pay their debts, shall be valid, unless it shall provide for a distribution of the partnership property among all the creditors, in proportion to the amount of their several claims, excepting the claims of the government of the United States, arising from bonds given for duties, which are first to be paid.

Assent of creditors thereto to be presumed. 1836, 211, § 8.

**SECT. 15.** The assent of the creditors to such an assignment shall be presumed, unless they, either expressly, or by some act inconsistent with such assent, shall dissent therefrom within sixty days from the time of notice; and no such assignment shall be valid, unless notice thereof shall be given in some newspaper, printed in the county where the place of business of the assignors is situated, and if there is none printed in such county, then in some one in an adjoining county, or in the newspaper published by the printer to the state, within fourteen days after the making such assignment.

Mode of notice.

In whose names suits may be brought. 1836, 211, § 9.

**SECT. 16.** All suits, respecting the business of such partnership, shall be commenced and prosecuted by and against the general partners only, except in those cases, in which provision is herein before made, that special partners shall be deemed general partners, and special partnerships, general partnerships; in which cases, all the partners, deemed general partners, may join or be joined in such suits; and except, also, cases, where special partners shall be severally held responsible, under the provisions of the thirteenth section.

Of voluntary dissolution within the time specified. Notice thereof. 1836, 211, § 10.

**SECT. 17.** No voluntary dissolution of such partnership shall take place, before the time specified in the certificate before named, unless a notice of such dissolution be recorded in the registry, in which the original certificate, or certificate of renewal or continuance, was recorded, and in any other registry, where a copy of said cer-

tificate was recorded ; and published in such paper, as is directed CHAP. 45.  
in the seventh section of this chapter.

SECT. 18. In all cases, not otherwise provided for in this chapter, the members of limited partnerships shall be subject to the same legal liabilities, and entitled to all the legal immunities, which are incident to general partnerships ; and the supreme judicial court may hear and determine, in equity, all questions between co-partners, in any partnership, formed by virtue of this chapter, and between said co-partners [and] any creditors of the firm.

Rights and obligations in cases, not specified, the same as in general partnerships. 1836, 211, § 11.

## CHAPTER 46.

### OF SALES OF PROPERTY BY LICENSED AUCTIONEERS.

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| <p>SECT. 1. Licenses by selectmen, &amp;c. for one year.<br/>2. To be recorded.<br/>3. Appeal to the county commissioners.<br/>4. Certain prohibitions upon auctioneers.<br/>5. Accounts of sales.<br/>6. Exceptions, as to sales by sheriffs and other officers.</p> | <p>SECT. 7. Several persons may be licensed, if necessary.<br/>8. Penalty for sales by persons, not licensed.<br/>9. Penalty for selling property in another town.<br/>10. Penalty on occupant of any building, for unlawful sales therein.<br/>11. Mode of recovering penalties.</p> |
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SECTION 1. The selectmen of any town, and the assessors of any plantation, may license any suitable inhabitant of such town or plantation, by a writing under their hands, to be an auctioneer within the same for one year. Licenses by selectmen, &c. for one year. 1821, 134, § 1. 4 Greenl. 333.

SECT. 2. Such selectmen or assessors shall record every license, they shall so grant, in a book kept by them for that purpose. To be recorded. 1821, 134, § 1.

SECT. 3. If such selectmen or assessors shall unreasonably refuse or neglect, after application made in writing to them, by any person desirous of obtaining such license, such applicant, after having given ten days notice to such selectmen or assessors, may apply to the county commissioners, who are hereby authorized, after a hearing of the parties, to grant such license, if they judge it reasonable ; provided such applicant shall give bond to the selectmen or assessors to pay all costs, arising in consequence of such application to the commissioners. Appeal to the county commissioners. 1821, 134, § 2.

SECT. 4. If any person duly licensed, as aforesaid, shall receive any goods for sale at public auction, of any servant or minor, knowing him to be a servant or minor, or shall sell any of his own goods before sunrise, or after sunset, at public auction, he shall forfeit and pay a sum not less than fifty dollars, nor more than one hundred and seventy dollars, for each offence. Certain prohibitions upon auctioneers. 1821, 134, § 3.

SECT. 5. Every person, licensed as aforesaid, shall keep a fair and particular account of all goods and chattels by him sold, stating and of whom they were received, and to whom the same were sold. Accounts of sales. 1821, 134, § 3.

SECT. 6. Nothing in any of the preceding sections shall extend to sales made by sheriffs, deputy sheriffs, coroners, constables or Exceptions, as to sales by sheriffs and other

**CHAP. 46.** collectors of taxes, executors or administrators, or any other person, who may be, or who now is, authorized to sell goods, chattels or lands, by order of any court or judge of probate.

officers.

1821, 134, § 3.

Several persons may be licensed, if necessary. 1821, 134, § 1.

Penalty for sales by persons, not licensed.

Penalty for selling property in another town. 4 Greenl. 333.

Penalty on occupant of any building, for unlawful sales therein. 1821, 134, § 4.

Mode of recovering penalties. 1821, 134, § 5.

**SECT. 7.** When circumstances render it proper or convenient, such selectmen or assessors may license several persons as auctioneers, in the towns or plantations, of which they are inhabitants, conforming to all the foregoing provisions.

**SECT. 8.** If any person, not being licensed and qualified as aforesaid, shall sell any lands, goods or chattels at public auction, he shall forfeit not exceeding six hundred dollars.

**SECT. 9.** If any person, licensed and qualified as aforesaid, shall sell or offer to sell, any lands, goods and chattels at public auction, in any other town or plantation, than that in which he was licensed, he shall forfeit and pay a sum, not exceeding six hundred dollars; provided that any parcel of real estate, lying partly in one town or plantation, and partly in another, may be sold in either of such towns or plantations, by an auctioneer of either.

**SECT. 10.** If the tenant or occupant of any house, or store or other building, having actual possession and control of the same, shall knowingly permit any person to sell any goods or chattels at public auction, contrary to any of the provisions of this chapter, in such house, store or building, or in any apartment or yard appurtenant to the same, he shall forfeit and pay a sum, not exceeding six hundred dollars, nor less than one hundred dollars.

**SECT. 11.** The penalties in this chapter may be recovered on indictment, or by action of debt, for the use of him, who may prosecute or sue for the same.

## CHAPTER 47.

### OF PILOTAGE, SHIPPING, SHIP OWNERS AND CHARTERERS.

**SECT. 1.** Of the appointment of pilots.

2. Their oath and bonds.

3. Of their authority, as to inward bound vessels.

4. Their fees to be fixed by the governor and council.

5. Liabilities of such pilots.

6. Of the pilotage of outward bound vessels.

7. Of the suspension, or removal, of pilots.

**SECT. 8.** Extent of ship owners' liability to the owners of goods.

9. Apportionment amongst freighters, &c. on their claims against owners.

10. Charterer taken to be owner; and responsible to the true owner.

11. Exception as to fraud in master or mariners.

Of the appointment of pilots. 1821, 177, § 1.

**SECTION 1.** The governor, with advice of the council, may appoint and commission one or more pilots, for such ports as may apply for the same, such application to be signed by a majority of the ship owners and ship masters, in the port recommending such suitable person or persons; and give to each of said pilots, branches or warrants, for the execution of the duties of their office. All pilots, now in commission, shall hold their offices according to the tenor thereof.

- SECT. 2.** Every pilot, before entering on the duties of his office, shall be duly sworn to perform faithfully and truly the duties of a pilot, for the port or harbor, for which he has been appointed; and give bond to the treasurer of the state, in the sum of five thousand dollars, for the performance of the trust reposed in him. CHAP. 47.  
Their oath and bonds.  
1821, 177, § 2.
- SECT. 3.** Every such pilot is authorized and directed to take charge of any vessel drawing nine feet of water or upwards, bound into any of the said ports; and shall pilot such vessel into the port, assigned to him, first showing to the commander thereof his branch, and informing him of his fees; but the master of any vessel, who may choose to hazard the pilotage of his own vessel, may do it without being subject to pay pilotage. Of their authority, as to inward bound vessels.  
1821, 177, § 2.
- SECT. 4.** The governor and council may fix the fees of pilotage of the several pilots, and specify the same in their warrants; and also transmit to each collector of the customs in the said ports, a schedule of said fees, to be hung up by such collector for public inspection. Their fees to be fixed by the governor and council.  
1821, 177, § 3.
- SECT. 5.** If any vessel, while under the charge of a branch pilot, shall be lost or run aground, or cast away through the neglect or unskilfulness of such pilot, he shall be liable to pay the just value of the vessel and cargo, or any proportional damage, which may be sustained; to be sued for and recovered by the owner or insurer of the property. Liabilities of such pilots.  
1821, 177, § 4.
- SECT. 6.** All vessels, drawing nine feet of water and upwards, bound to sea out of any of the said ports, except coasting and fishing vessels, shall be under the same restrictions, and be liable to pay the same fees, as those bound into any such ports; and all pilots of any outward bound vessels shall be liable to similar actions for damages, and subject to the same penalties for their neglect or unskilfulness, as if the same vessels were bound into said ports. Of the pilotage of outward bound vessels.  
1821, 177, § 5.
- SECT. 7.** The governor and council are empowered to hear and determine all complaints against such pilots, for misconduct in the premises, and may suspend or remove them, at their discretion, and appoint others in their room. Of the suspension, or removal, of pilots.  
1821, 177, § 6.
- SECT. 8.** No ship owner shall be answerable, beyond the amount of his interest in the ship and freight, for any embezzlement, loss or destruction by the master or mariners, of any goods or merchandize, or any property put on board of such ship or vessel; nor for any act, matter or thing, damage or forfeiture, done, occasioned or incurred, by said master or mariners, without the privity or knowledge of such owner. Extent of ship owners' liability to the owners goods.  
1821, 14, § 8.
- SECT. 9.** If any such embezzlement, loss or destruction, as mentioned in the preceding section, shall be suffered by several freighters or owners of goods, wares or merchandize, or any property whatever on the same voyage, and the whole value of the ship or vessel, and her freight for the voyage, shall not be sufficient to make compensation to each of them, they shall receive compensation from the owner of the ship in proportion to their respective losses, and for that purpose the said freighters and owners of the property, and the owner of the ship or vessel, or any of them, may prosecute a bill in equity, for discovery and payment of the sum, for which the owner or owners of the ship may be liable, amongst the parties entitled thereto. Apportionment amongst freighters, &c. on their claims against owners.  
1821, 14, § 9.

**CHAP. 47.**  
Charterer taken to be owner; and responsible to the true owner. 1821, 14, § 10.

**SECT. 10.** The charterer of any vessel, in case he shall navigate such vessel at his own expense, shall be deemed the owner, within the meaning of the two preceding sections; and if any loss shall happen to any person from any of the causes, mentioned in the eighth section, and the same shall be compensated from the freight, or the proceeds of the sale of such vessel, or both, the owner or owners of such vessel or freight may recover the amount thereof from the persons, to whom the vessel was chartered.

Exception, as to fraud in master or mariners.

**SECT. 11.** Nothing in any of the preceding sections shall be construed to take away or affect the remedy, to which any party may be entitled against any master or mariner, for or on account of any embezzlement, loss or destruction of goods, wares or merchandise, or any property put on board of any ship or vessel, on account of any fraud or malversation of such master or mariners, respectively.

## CHAPTER 48.

### OF BOATS AND LIGHTERS, AND PROTECTION OF HARBORS.

- SECT. 1.** How lighters carrying stones, gravel, &c. shall be marked.  
 2. Penalty for using such, not marked.  
 3. For putting false marks.  
 4. The same to be inspected annually.  
 5. Boats, &c. to be re-marked when their capacity varies.

**SECT. 6.** Fees.

7. Ballast not to be thrown over in port.  
 8. Penalty for taking ballast from islands, &c. without consent.

How lighters carrying stones, gravel, &c. shall be marked. 1821, 172, § 1.

**SECTION 1.** Every boat or lighter, employed in carrying stones, sand or gravel, shall be marked at light water mark, and at least at five other places, with figures four, twelve, sixteen, twenty four, and thirty, legibly made on the stem and stern post thereof; which figures shall express the weight such boat or lighter is capable of carrying, when the lower part of the respective numbers shall touch the water, in which said boat or lighter shall float; and such mark shall be inspected yearly, and when found illegible in whole or in part, they shall be renewed.

Penalty for using such, not marked. 1821, 172, § 1.

**SECT. 2.** The master or owner of any boat or lighter, which shall be used or employed, not being marked as required in the preceding section, shall forfeit and pay fifty dollars, to be recovered by any person, who shall sue for the same in an action of debt.

For putting false marks. 1821, 172, § 1.

**SECT. 3.** Any person, who shall put false marks on any boat or lighter, as aforesaid, shall be liable to the same penalty, to be recovered in the same manner.

The same to be inspected annually. 1821, 172, § 2.

**SECT. 4.** The selectmen of every town, where boats and lighters are employed for the purposes above mentioned, shall annually appoint, in April or May, some suitable person to examine and ascertain the capacities of all such boats and lighters, and mark the same, as prescribed in the first section, who shall be duly sworn to perform such duties.

Boats, &c. to

**SECT. 5.** Whenever such inspector shall be of opinion, that the

burden or capacity of any such boat or lighter has been increased, or diminished by any repairs or otherwise, he shall forthwith ascertain, anew, the capacity of such boat or lighter, and mark her accordingly.

**SECT. 6.** Such selectmen shall establish and regulate the fees of such inspectors for their services.

**SECT. 7.** No master of any ship or vessel shall throw overboard any ballast, in any road, port or harbor, on penalty of sixty dollars; to be recovered, one half to the use of the town in which such offence is committed, and the other half to any person, who will sue for the same.

**SECT. 8.** If any master of a vessel, or other person, shall take, from any island, beach, or other land, without the consent of the owner, any stone or other ballast, he shall forfeit and pay for each offence, not exceeding seven dollars; to be recovered by action of debt, and to the same uses as mentioned in the preceding section.

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be re-marked, when their capacity varies. 1821, 172, § 3.

Fees. 1821, 172, § 4.

Ballast not to be thrown over in port. 1821, 173, § 1.

Penalty for taking ballast from islands, &c. without consent. 1821, 173, § 2.

## CHAPTER 49.

### OF WRECKS AND SHIPWRECKED GOODS.

**SECT. 1.** Appointment of commissioners.

2. Their oath and bonds.

3. General duties and powers.

4. Inventory to be taken. Compensation.

5. Compensation of other persons in certain cases.

6. Adjustment of compensation.

7. Penalty for unauthorized intermeddling.

8. Public information of the wreck, &c. to be given.

**SECT. 10, 11.** In what cases the property may be sold.

12. Property to be accounted for to the state treasurer, after one year.

13. Treasurer to allow the commissioners, pay.

14. Proceedings, when the commissioner neglects to account, &c.

15. Former commissioners retained in office.

**SECTION 1.** The governor, with consent of the council, may appoint in the several counties, where he may deem it necessary, one or more commissioners of wrecks and shipwrecked goods, who shall be removable at pleasure.

Appointment of commissioners. 1821, 14, § 5.

**SECT. 2.** Each of the said commissioners shall be duly sworn, and shall give bond to the judge of probate of the county, for which he is appointed, for the faithful discharge of his duties; and any person interested may have the same remedy for the breach of any such bond, as is given on administrators' bonds for the settlement of estates of deceased persons.

Their oath and bonds. 1821, 14, § 5.

**SECT. 3.** Every such commissioner, immediately, on receiving information of any shipwreck, or of finding any shipwrecked goods, or property of any kind, to the amount of one hundred dollars or more, on any of the shores or waters within his county, shall repair to the place where the said property may be found, and, in case the same shall not be in the custody of any owner or agent, he shall take charge thereof, and shall secure and preserve the same for the owner.

General duties and powers. 1821, 14, § 6.

- CHAP. 49.**     **SECT. 4.** The commissioner in such case may employ as many persons, as he shall think necessary, to assist in preserving the property; and he may appoint guards to receive the same; and may suppress all tumults and disorders: and if any person shall disobey any lawful order of the commissioner, he shall forfeit, for every such offence, a sum not exceeding ten dollars, to be recovered in an action on the case, in the name of the commissioner, to the use of the town.
- SECT. 5.** The commissioner shall, on every such occasion, take an inventory of all the property, that shall come to his possession; and, when required by the owner of the property or his agent, or by any person interested, he shall make oath to the truth of such inventory; and shall deliver a copy thereof, if required, together with all the said property, to the owner or agent, or other person lawfully authorized to receive it: provided there shall be first paid, or secured to be paid, to the commissioner, a reasonable compensation for his services, and such custom house duties and other charges, if any, as he shall have paid, or become liable to pay, on account of the property in question.
- SECT. 6.** No person interested in any such property shall be held to pay to any person, other than a commissioner, any compensation for services or expenses in taking or securing the property, unless it be for property taken or secured before the arrival of the commissioner: in which case the commissioner shall, upon due hearing of all parties interested, determine the amount of compensation, by his award in writing; which shall be final, unless the sum awarded to any party shall exceed fifty dollars.
- SECT. 7.** If the commissioner and the party interested disagree, respecting the charges of the commissioner, or if the award, made pursuant to the preceding section, exceed the sum of fifty dollars, and shall be unsatisfactory to any party, the person aggrieved may appeal to the judge of the district court for the county, where the property is situated; who shall, either in vacation or term time, decide the case in a summary manner, on due notice, and may order the clerk, under the seal of the court, to issue such process, as may be necessary, to carry his order into effect.
- SECT. 8.** If any person shall, after the arrival of a commissioner, take, detain or intermeddle with any property, shipwrecked or found as aforesaid, except under the direction of the commissioner, or of some person interested, he shall forfeit a sum not exceeding one thousand dollars for each offence; to be recovered in an action of debt, which may be brought by the commissioner, or any person interested, to his own use.
- SECT. 9.** The commissioner, as soon as may be after his arrival at the place, where such property shall be found, shall publish the particulars of the shipwreck, and of the goods found, with such other material facts as he shall ascertain, in such manner, as he shall deem best for the information of all parties interested: in case of neglect, he shall forfeit fifty dollars to the use of any party interested, who shall first sue therefor in an action of debt.
- SECT. 10.** The commissioner may dispose of so much of the property, by public auction, within thirty days after taking the same
- Same subject.  
1821, 14, § 6.
- Inventory to be taken.  
1821, 14, § 6.
- Compensation.
- Compensation of other persons in certain cases.  
1821, 14, § 6.
- Adjustment of compensation.  
1821, 14, § 6.
- Penalty for unauthorized intermeddling.  
1821, 14, § 6.
- Public information of the wreck, &c. to be given.  
1821, 14, § 7.
- In what cases the property may be sold.  
1821, 14, § 7.

into his custody, as shall be necessary to pay the duties thereon to the custom house. CHAP. 49.

**SECT. 11.** He may sell by auction, to the best advantage, such of the property as may be of a perishable nature, whenever necessity may require it, giving reasonable public notice, and, if practicable, in a public newspaper. Same subject. 1821, 14, § 7.

**SECT. 12.** If no person interested shall appear, within one year after such property shall have been taken into the custody of the commissioner, and establish his claim thereto, the commissioner shall present, under oath, to the treasurer of the state, an inventory of the property; and if sold, an account of the sales; with an account of all moneys, paid by him as duties and expenses on the same: and he shall pay and deliver to the treasurer the balance of such accounts, with all the property remaining in his hands, for the use of the state. Property to be accounted for to the state treasurer, after one year. 1821, 14, § 7.

**SECT. 13.** The treasurer may make to the commissioner such compensation, for his services and expenses, as shall be just; to be ascertained, in case of disagreement between the treasurer and commissioner, in the manner provided in the cases mentioned in the seventh section. Treasurer to allow the commissioner, pay. 1821, 14, § 7.

**SECT. 14.** If any commissioner shall, for the space of sixty days after the expiration of the year, herein before limited for his accounting with the treasurer, neglect to comply with the provisions of the twelfth section, the treasurer shall cause a suit to be commenced therefor, for the use of the state, and shall prosecute the same to final judgment and execution. Proceedings, when the commissioner neglects to account, &c. 1821, 14, § 7.

**SECT. 15.** All commissioners, heretofore appointed, shall remain in office, subject to its previous limitations. Former commissioners retained in office.

## CHAPTER 50.

### OF THE INSPECTION OF BEEF AND PORK.

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| <p><b>SECT. 1.</b> Appointment of inspector general.</p> <p><b>2.</b> His oath and bond.</p> <p><b>3.</b> His deputies.</p> <p><b>4.</b> Deputies remain, pending a vacancy in the office of inspector general.</p> <p><b>5.</b> Of the deputies' bonds and oath.</p> <p><b>6.</b> Inspector or his deputy to act within twenty four hours, after request.</p> <p><b>7.</b> Inspection to be in a suitable place, under the control of the inspector.</p> <p><b>8.</b> Inspection charges to be paid in advance, or secured.</p> <p><b>9.</b> Beef and pork to be packed in barrels, or half barrels.</p> <p><b>10.</b> Of the age of beef cattle. How to be cut up.</p> | <p><b>SECT. 11.</b> How to be assorted and branded, in general. Mess beef. Number one. Prime cargo. Hearts and cheeks.</p> <p><b>12.</b> May be inspected and packed by request, as extra mess and navy mess.</p> <p><b>13.</b> Mode of salting beef.</p> <p><b>14.</b> The round may be reserved for smoking, jerking, &amp;c. Neck and chines.</p> <p><b>15.</b> Of the various brands of pork. Extra clear and clear pork, bone middlings, navy mess, number one, prime, cargo.</p> <p><b>16.</b> Pork heads or feet.</p> <p><b>17.</b> Mess pork.</p> |
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- CHAP. 50.** SECT. 18. Proportions of salt. Casks to be branded.
19. Contents and materials of barrels and half barrels.
20. Dimensions, &c. when for beef.
21. Also for pork.
22. Manufacturer's brand.
23. Inspector's and owner's brands.
24. Name of month abridged, if, &c.
25. Inspector to brand no casks, unless on personal inspection.
26. Penalty for misconduct in the inspector.
27. Deputies limited to the town or county, for which appointed.
28. None but inspector or deputy, to brand as such.
29. Branding under section fourteen.
30. Certain parts of pork, not to be branded at all.
31. Penalty for intermixing beef or pork, after inspection.
32. When beef or pork imported, may or may not, be re-exported or sold.
33. Of the inspector's certificate to the collector of the United States.
- SECT. 34. Oath to be taken by master or owner.
35. Penalty for exporting uninspected beef or pork.
36. How the same may be seized.
37. And libeled and condemned.
38. Extent of the provisions of this chapter.
39. Penalty for selling clear pork, by the barrel, unless inspected, &c.
40. Inspection in another state, sufficient.
41. Recovery of fines and forfeitures.
42. Annual returns of the inspector and his deputies.
43. Inspector may administer oaths.
44. How beef and pork may be weighed.
45. Appointment of weighers of beef.
46. Form of weigher's certificate.
47. Penalty for purchasing without weighing, unless agreed.
48. Hides to be weighed and certified.
49. Inspector and deputies to continue in office.

Appointment of inspector general. 1821, 148, § 1.

**SECTION 1.** There shall be an inspector general of beef and pork for the state, well skilled in the knowledge thereof, to be appointed by the governor, with advice and consent of the council, whenever a vacancy shall occur in the office; and to be by them removable at pleasure.

His oath and bond. 1821, 148, § 1.

**SECT. 2.** Before entering upon the duties of his office, he shall give bond, with sufficient sureties, to the treasurer of the state, for the faithful discharge of his duties, in the penal sum of four thousand dollars; and shall be duly sworn.

His deputies. 1821, 148, § 1.

**SECT. 3.** The inspector general shall appoint one or more deputies, in every port in this state, where beef and pork are exported, and a convenient number in the several counties; and he shall be responsible for the neglect or misconduct of his deputies, whilst acting under him.

Deputies remain, pending a vacancy in the office of inspector general. 1831, 511, § 9.

**SECT. 4.** Whenever the office of inspector general shall become vacant by death or otherwise, his deputies may continue to discharge the duties of the office until a successor shall be appointed; and they shall be held accountable to the state.

Of the deputies' bonds and oath. 1821, 148, § 1. 1831, 511, § 9.

**SECT. 5.** Every deputy inspector shall give bonds to the inspector general, with sureties to his satisfaction, for the faithful performance of his duty, in a sum not less than three hundred, nor more than one thousand dollars: and the bond shall be so expressed, as to enure to the use of the state, for such time as the deputy may exercise the duties of the appointment, pending any vacancy in the office of inspector general, pursuant to the preceding section. Such deputy shall also be duly sworn.

Inspector or his deputy to act within twenty four hours after request. 1821, 148, § 5.

**SECT. 6.** The inspector general, within the county where he resides, or his deputy, within the county, or town, for which he may be appointed, shall, as soon as may be, within twenty four hours after request made, attend at any suitable place, for the purpose of

inspecting any quantity of beef or pork, or both, exceeding five barrels; and commence thereon, as soon as consistent with the provisions of the following section.

**SECT. 7.** Neither the said inspector, nor his deputy, shall begin to pack, or repack, any beef or pork, before a convenient, strong and secure place, shall have been provided by the party claiming such inspection, and the key thereof lodged with him; and it shall be the duty of the inspector or deputy to keep the said key, until such beef or pork shall be packed or repacked, salted, coopered and branded, or otherwise prepared for exportation, as provided in this chapter.

**SECT. 8.** Such officer shall not be liable, for neglecting or refusing to commence upon any inspection or other service, before all the inspection charges for inspecting, cutting, salting, coopering and branding such beef or pork shall either be paid, or satisfactorily secured to him.

**SECT. 9.** Whenever the said inspector or his deputy shall have inspected and assorted any beef or pork, as hereinafter directed, he shall, with the assistance, if necessary, of laborers and coopers in his employ, and for whose conduct he shall be responsible, cut, weigh, pack, salt and cooper, the said beef and pork, in barrels or half barrels, as required in this chapter.

**SECT. 10.** No beef shall be packed or repacked in barrels or half barrels for exportation, unless it be of fat cattle, not under two years old; and all such beef shall be cut into pieces, as nearly square as may be, and of not more than eight, nor less than four pounds in weight, except where otherwise expressly provided.

**SECT. 11.** Excepting as provided in the twelfth and fourteenth sections, all beef, which the inspector or his deputy shall, on examination, find to have been killed at a proper age, and otherwise good and merchantable, shall be by him divided into five different sorts, for packing or repacking; to be denominated and branded respectively, mess, number one, prime, cargo, and hearts and cheeks.

Mess beef shall consist of oxen, cows and steers, well fattened, of three years old and upwards, and weighing six hundred pounds and upwards; the shin, shoulder, clod and neck, shall be taken from the fore quarters, and the leg and the leg round from the hind quarters: and each barrel and half barrel, containing beef of this description, shall be branded on one of the heads with the words, *mess beef*.

Number one shall consist of oxen, cows, steers and heifers, not under three years old, and weighing not under four hundred pounds, and to average five hundred and twenty pounds without any necks or shanks. On one head of each barrel or half barrel, containing beef of this description, shall be branded, *No. 1*.

Prime beef shall consist of fat cattle of all descriptions, not before mentioned, of two years old and upwards, bulls excepted, with not more than half a neck and two shanks, and without any hocks; each barrel and half barrel of which shall be branded, *prime beef*.

Cargo beef shall consist of those parts of beef, which are excluded from mess, number one, and prime, not including hearts and cheeks; and shall be packed and inspected by the inspector general or his

**CHAP. 50.**

Inspection to be in a suitable place, under the control of the inspector. 1831, 511, § 7.

Inspection charges to be paid in advance, or secured. 1831, 511, § 7.

Beef and pork to be packed in barrels or half barrels. 1821, 148, § 5.

Of the age of beef cattle. How to be cut up. 1821, 148, § 3.

How to be assorted and branded, in general. 1821, 148, § 3.

Mess beef. 1821, 148, § 3.

Number one. 1821, 148, § 3.

Prime. 1821, 148, § 3. 1832, 18, § 1.

Cargo. 1821, 148, § 3. 1832, 18, § 1.

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deputy, in the same manner as No. 1, or prime, and shall be branded *cargo beef*; first taking from the parts excluded as aforesaid, namely, from the end of the neck, not less than four pounds, nor more than six, and from the shank and shin of each quarter, not less than four pounds, nor more than eight: which pieces, thus taken off, shall not be exported from this state.

Hearts and  
checks.

1821, 148, § 3.

May be inspect-  
ed and packed  
by request, as,

Extra mess,  
1831, 511, § 3.

and

Navy mess.  
1825, 291.

The hearts and cheek pieces of beef may be inspected and packed, as aforesaid, and shall be branded, *hearts and cheeks*.

SECT. 12. The inspector or his deputy may also, at the request of the owner or agent, inspect and pack the following descriptions of beef, viz:

Oxen of four years old and upwards, and weighing seven hundred pounds and upwards, excluding the same parts as for mess beef, to be branded *extra mess*; and

Choice pieces of oxen, steers, cows and heifers, of three years old and upwards, weighing four hundred pounds or more, and to average five hundred and fifty pounds, excluding the same parts as for mess beef, to be cut into pieces of as nearly ten pounds, as practicable, and to be branded *navy mess*.

Mode of salting  
beef.

1821, 148, § 3.

1831, 511, § 8.

SECT. 13. Every barrel of beef shall be well salted, with seventy five pounds of clean St. Ubes, Isle of May, Lisbon or Turk's island salt, or eighty pounds of Liverpool salt, or other salt of equal quality, exclusive of a pickle made of fresh water, as strong as salt will make it; and to each barrel of mess, extra, or navy beef, shall be added not more than four, nor less than three ounces of saltpetre; and to each barrel of No. 1, prime and cargo beef, shall be added not more than three, nor less than two ounces; and for every half barrel of beef of the different kinds, one half of the stated quantity of salt and saltpetre shall be used.

The round may  
be reserved for  
smoking, jerk-  
ing, &c. Neck  
and chines.

1839, 387, § 1, 2.

SECT. 14. Any person, packing beef under the supervision of the inspector general or his deputy, may reserve for smoking, jerking or other purposes the round, being that part of the leg cut from the hind quarter, near to the edge bone, and the neck and chines of the fore quarter, cut as provided in the twelfth section; and the said beef, so reserved, shall be at the disposal of the owner either for consumption, or to export in hogsheads, or in any other mode of packing.

Of the various  
brands of pork.

1821, 148, § 4.

1824, 276, § 2.

1833, 50, § 1.

1832, 18, § 2.

SECT. 15. Excepting as provided in the sixteenth and seventeenth sections, all pork, packed or repacked in barrels or half barrels, for exportation, shall be divided into seven different sorts, to be denominated and branded, respectively, *extra clear pork, clear pork, bone middlings, navy mess pork, number one, prime pork and cargo pork*; and in all cases the following parts shall be taken out, as refuse, viz: nose pieces or faces, ears, brains, tail, feet and lard.

Extra clear and  
clear pork.

1831, 511, § 5.

1832, 50.

The two kinds of clear pork shall consist of the best pieces of large, well fattened healthy hogs, weighing three hundred pounds or upwards, free from bones, or the lean part of the meat, excepting the ends of the ribs and the brisket: and extra clear pork shall consist of such pieces, not less than three and a half inches thick, in the thickest part of such pieces, clear of lean; and the clear pork of such pieces, not less than two inches and a half thick, in the thickest part of such pieces, clear of lean.

Bone middlings shall consist of middling pieces taken from hogs, well fattened, weighing two hundred and thirty pounds and upwards. CHAP. 50.

Navy mess pork shall consist of all parts of the carcass, well fattened, weighing from one hundred and sixty pounds to two hundred and thirty pounds; except the head, fore and hind legs, the shoulder joint, lard, and refuse parts above mentioned.

Number one shall consist of all parts of hogs well fattened, averaging two hundred and twenty pounds or upwards, and each of which shall weigh not less than one hundred and eighty pounds, and to have no more heads, legs, shoulders or other coarse parts, than belong to one carcass, deducting the lard and refuse, as above.

Prime pork shall consist of all parts of one and a half hog, well fattened, which shall weigh two hundred pounds, deducting the lard and refuse, as above; and, if in half barrels, it shall consist of pig pork, all parts of one carcass or not, excluding the lard and refuse as above. In all cases, where the legs of pork are taken out for any other purpose, the weight shall not be made up of heads and shoulders, but with other parts of the carcass, not less valuable than the legs would be, if salted.

Cargo pork shall consist of the merchantable parts of wholesome pork of quality inferior to prime pork, and there shall not be more than the merchantable parts of two carcasses of pork in one barrel; except where any of the legs are taken out, the same number of shoulder pieces, and no more, may be added; the deficiency of weight to be made up in better parts of a carcass of pork.

SECT. 16. Barrels or half barrels, filled with pork heads or feet, shall be branded *pork heads* or *feet*, as the case may be.

SECT. 17. The inspector general or his deputy, at the request of the owner or agent, may inspect, cut, weigh, pack, or repack, salt, cooper or brand pork of the following description, which shall be branded *mess pork*; viz: every part, except the heads, legs, shanks and lard of well fattened hogs in good condition, weighing from two hundred to three hundred pounds, and averaging two hundred and fifty pounds.

SECT. 18. Every barrel of pork shall be well salted with seventy pounds, and every half barrel with thirty five pounds, of clean coarse salt, exclusive of a strong pickle; and each shall be branded on one of the heads, with the quality of the pork it contains.

SECT. 19. Every barrel of beef or pork, packed or repacked for exportation, shall contain two hundred pounds; and every half barrel one hundred pounds: and they shall each be made of good, seasoned, rift, white oak, white ash, or maple staves and heading, free from any defect.

SECT. 20. The beef barrels shall measure not less than sixteen inches, nor more than sixteen and a half inches, between the chimes; and be not less than twenty eight, nor more than twenty eight and a half inches long, to be covered, three fourths of the length, with good oak, ash, elm, leverwood or walnut hoops, leaving one fourth in the centre; the heads and staves to be of a proper thickness; the hoops to be well set, and drove together.

The half barrels shall contain not less than fifteen, nor more than fifteen and a half gallons, to be hooped in the same manner as barrels.

*Bone middlings.*  
Navy mess.  
1821, 148, § 4.

Number one.  
1821, 148, § 1.

Prime.  
1821, 148, § 4.  
1832, 18, § 2.

Cargo.  
1821, 148, § 4.  
1832, 18, § 2.

Pork heads or feet.  
1821, 148, § 4.

Mess pork.  
1831, 511, § 4.

Proportions of salt. Casks to be branded.  
1821, 148, § 4.  
1831, 511, § 4.

Contents and materials of barrels and half barrels.  
1821, 148, § 2.  
1832, 18, § 3.

Dimensions, &c. when for beef.  
1821, 148, § 2.  
1832, 18, § 3.

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Also for pork.  
1821, 148, § 2.

Manufacturer's  
brand.  
1821, 148, § 2.  
Inspector's and  
owner's brands.  
1821, 148, § 6.  
1831, 511, § 6.

Name of month  
abridged, if, &c.  
1821, 148, § 7.

Inspector to  
brand no casks,  
unless on per-  
sonal inspec-  
tion.  
1821, 148, § 8.

Penalty for mis-  
conduct in the  
inspection.  
1821, 148, § 8,  
10.

Deputies limit-  
ed to the town,  
or county, for  
which appoint-  
ed.  
1821, 148, § 9.

None but in-  
spector, or de-  
puty, to brand as  
such.  
1821, 148, § 9.

Branding under  
section 14.  
1821, 148, § 14.

Certain parts of  
pork, not to be  
branded at all.  
1821, 148, § 15.

Penalty for in-  
termixing beef  
or pork, after  
inspection.  
1821, 148, § 11.

SECT. 21. The pork barrels shall measure seventeen inches and one quarter between the chinnies, and contain not less than thirty one gallons, nor more than thirty one gallons and one half; and be hooped in the same manner, as beef barrels.

SECT. 22. All beef and pork barrels and half barrels, shall be branded on the bilge, with the manufacturer's name.

SECT. 23. Every barrel and half barrel of pork and beef, packed or repacked for exportation, shall be branded with the initial letter or letters of the christian name, and the surname at length of the inspector, who shall have inspected the same, with the name of the town where, and the month and year in which inspected, and the actual weight in legible letters and figures, with the addition of the word, MAINE. Every barrel or half barrel of beef, marked extra mess, navy mess, number one, or prime, or of pork, marked extra clear, clear, bone middlings, or navy mess, shall be branded with the name of the person, for whom the same was packed.

SECT. 24. If the name of the month, in which any beef or pork shall be inspected, consist of more than one syllable, it may be abridged in branding.

SECT. 25. Neither the inspector general, nor his deputy, shall brand any packages of beef or pork, other than those he has personally inspected, and has caused to be weighed and packed, as the law requires.

SECT. 26. If any inspector or deputy shall brand any package, contrary to the provisions of the preceding section: or if, his fees being duly tendered or secured to him, as provided in the eighth section, he shall neglect and refuse to perform any duty, pertaining to his office; or if he shall be guilty of any neglect or fraud in the exercise of his office; he shall forfeit, for each offence, ten dollars.

SECT. 27. No deputy inspector shall inspect or brand any cask of beef or pork, out of the town or county, for which he shall be appointed, under the penalty of fifty dollars.

SECT. 28. If any person, other than the inspector general or his deputy, shall stamp or brand any cask of beef or pork, with the intent that the same shall pass for beef or pork, inspected and branded according to law, he shall forfeit twenty dollars for every cask, so unlawfully branded.

SECT. 29. Whenever any beef shall be reserved for exportation agreeably to the provisions of the fourteenth section, the hogshead or other package, containing the same when exported, shall be branded on one head with the name of the owner, and of the town where he resides, under the penalty of one dollar for each package, not branded.

SECT. 30. The feet, ears and faces of pork, when separated from the cheek part of the head, or any other pieces prohibited by this chapter, shall not be exported under the brand *refuse*, nor any other brand allowed for pork to be exported.

SECT. 31. If any person shall intermix, take out, or shift any beef or pork, out of any cask inspected or branded as required by this chapter, or shall put in any other beef or pork for sale or exportation, with a fraudulent intent, he shall forfeit twenty dollars for each offence.

**SECT. 32.** No pork or beef, imported into this state in barrels, half barrels or other casks, which shall not bear thereon the marks of an inspection, shewing the quality and quantity thereof, and the name of an inspector of some one of the United States, shall be shipped, or sold, or offered for sale in this state; and any person, shipping, selling or offering for sale, any such beef or pork, shall forfeit for every such barrel, half barrel or other cask, ten dollars.

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When beef or pork imported, may, or may not, be re-exported, or sold.  
1821, 276, § 1.  
1831, 511, § 2.

**SECT. 33.** Excepting as herein before particularly mentioned, no salted beef, nor pork, shall be exported out of this state, unless the master or owner of the vessel produces to the collector or other officer of the United States, granting a clearance, a certificate from the inspector general or his deputy, that the same has been inspected and branded, according to the directions of this act, and each certificate shall express the number of barrels and half barrels of beef or pork, of each sort.

Of the inspector's certificate to the collector of the United States.  
1821, 148, § 13.

**SECT. 34.** The master or owner, on producing such certificate, shall take and subscribe the following oath, before the officer granting the clearance, namely:

Oath to be taken by master, or owner.  
1821, 148, § 13.

"I, A. B., master (or owner as the case may be) of the \_\_\_\_\_, do swear, that according to the best of my knowledge and belief, the certificate, hereunto annexed, contains the whole quantity of salted beef (or pork as the case may be) on board the \_\_\_\_\_, \_\_\_\_\_ master; and that no salted beef, nor pork, is shipped on board the said vessel for the ship's company, on freight or cargo, but what is inspected and branded, according to the law of this state."

**SECT. 35.** If any person shall export, or ship for exportation, out of this state, any salted beef or pork, not inspected and branded, as is directed by this chapter, every owner or shipper thereof, privy to such offence, shall forfeit six dollars, and the master of every vessel, having on board such uninspected beef or pork, two dollars, for every cask, exported, or shipped for exportation.

Penalty for exporting uninspected beef, or pork.  
1821, 148, § 16.

**SECT. 36.** Any justice of the peace on complaint being made to him, of any such beef or pork being put on board any vessel in his county for exportation, may issue his warrant, directed to the proper peace officer, requiring him to make seizure of the same, and the same shall be seized and secured for trial; or the inspector general or his deputy may, on the like information, make seizure thereof, and secure the same for trial.

How the same may be seized;  
1821, 148, § 16, 18.

**SECT. 37.** The said peace officer, or inspector general, or his deputy, thus having made seizure, shall, as soon as may be, file a libel or information thereupon in any court proper to try the same; and if upon trial of such beef or pork, so seized, it shall appear, that the same was thus shipped, against the provisions of this act, it shall be liable to condemnation and forfeiture, agreeably to the provisions of chapter one hundred and thirty two; one half to the use of the state, and the other moiety to the use of the officer seizing and prosecuting for the same.

And libeled and condemned.  
1821, 148, § 16, 18.

**SECT. 38.** All the provisions of this chapter shall extend to all beef or pork, transported, or intended to be transported, coastwise, from any port or place in this state to any other state or country, or shipped on board any vessel, for any purpose whatever.

Extent of the provisions of this chapter.  
1821, 148, § 19.

**SECT. 39.** No person shall sell clear pork by the barrel, unless

Penalty for sel-

**CHAP. 50.** the same shall have been inspected in this or some other of the United States, or unless by mutual agreement between the buyer and seller; under the penalty of not less than ten, nor more than twenty dollars, per barrel.

ling clear pork, by the barrel, unless inspected, &c. 1824, 276, § 3. Inspection in another state, sufficient. 1824, 276, § 1.

**SECT. 40.** All beef and pork, or other salted provisions, that have been inspected in any other of the United States, and duly marked or branded, pursuant to the laws of such state, for exportation, may be sold in this state, or may be re-exported, without being subject to re-inspection.

Recovery of fines and forfeitures. 1821, 148, § 17.

**SECT. 41.** All the foregoing fines and forfeitures, where other provision for their recovery is not expressed, shall be recovered in an action of debt, or by complaint, in any court competent to try such action of debt; one half to the use of the town wherein the offence may have been committed, and the other half to the prosecutor.

Annual returns of the inspector and his deputies. 1821, 148, § 20.

**SECT. 42.** Every deputy inspector shall make an annual return to the inspector general, of the number of barrels and half barrels of beef and pork, inspected by him; and the inspector general, in the month of January, annually, shall make a return into the office of the secretary of state, of the whole number of barrels and half barrels, inspected by him and his deputies, under the provisions of this chapter, the preceding year, under each of the respective brands used by them; designating in the return the different sorts and places where inspected. The said returns shall be made up to the first day of January, in each year.

Inspector may administer oaths. 1821, 148, § 20.

**SECT. 43.** The inspector general may administer the several oaths, required of his deputies, or of others, by this chapter, pertaining to the business of his office.

How beef and pork may be weighed. 1821, 148, § 21.

**SECT. 44.** No beef nor pork shall be weighed by the owners or keepers of any slaughter houses, stores or warehouses, or by persons under their control in the transaction of their business, in any greater quantity than fifty pounds, unless in scales and with weights, or by the vibrating steelyard, invented by Benjamin Dearborn, or the vibrating steelyard, invented or improved by Samuel Hills, sealed according to law; and any such owner, keeper or other person, who shall otherwise weigh any beef or pork, exceeding fifty pounds, at any one time, shall forfeit ten dollars; to be recovered and to be appropriated, as provided in the forty first section.

Appointment of weighers of beef. 1821, 148, § 22.

**SECT. 45.** The selectmen of every town, the mayor and aldermen of each city, and the assessors of every plantation, where beef cattle are sold for immediate consumption, or for barreling, shall appoint one or more suitable persons, not dealers in cattle, to weigher or weighers of beef, who shall be duly sworn.

Form of weigher's certificate. 1821, 148, § 23.

**SECT. 46.** All beef, sold as aforesaid, shall be weighed by the sworn weighers, and certificates of the weight of all the beef, and tallow of each head of cattle, shall be signed by the said weighers, and delivered to the seller thereof, in the form following, viz:

“This certifies, that I have duly weighed the cattle, bought by \_\_\_\_\_, of \_\_\_\_\_, from \_\_\_\_\_, of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18—:

Beef, . . .					
Hide, . . .					
Tallow, . .					
Total, . . .					

A. B., *Sworn weigher.*"

SECT. 47. Any person, who shall purchase beef cattle, for marketing or exportation, not weighed pursuant to the foregoing provisions, other than live cattle, and excepting, when the weight or mode of weighing shall be agreed upon expressly by the buyer and seller, shall forfeit thirty dollars for each offence; to be recovered, and to be appropriated, as provided in the forty first section.

Penalty for purchasing without weighing, unless agreed. 1821, 148, § 24.

SECT. 48. The inspector general and his deputies, either by themselves, or by other persons by them appointed, and who shall be duly sworn, shall weigh all hides taken from cattle, slaughtered for barreling, making reasonable deductions for tare and drainage; and they shall give a certificate, specifying the gross weight and the deductions, made as aforesaid.

Hides to be weighed and certified. 1832, 13, § 4.

SECT. 49. The inspector general and his deputies shall continue to hold their offices, and exercise the duties thereof, notwithstanding the provisions of this chapter, during the term fixed for their respective appointments, or until removed.

Inspector and deputies to continue in office.

**CHAPTER 51.**

OF LIME AND LIME CASKS.

- SECT. 1. Inspectors to continue in office.
- 2. Future appointments.
- 3. Qualifications and term of office.
- 4. Oath and bond.
- 5. Amount of bonds in different towns.
- 6. Of deputy inspectors.
- 7. Inspector's duties.
- 8. Penalties for his misconduct.
- 9. Quality of lime for sale, or exportation. Kind of casks.

- SECT. 10. Casks to be branded with the maker's name.
- 11. Penalty for selling, or buying, illegal casks. Lien.
- 12. For selling, &c. lime in casks, not legally made, marked and branded.
- 13. For fraudulently shifting contents of casks.
- 14. How penalties recovered.
- 15. Remedy on inspector's bond.

SECTION 1. The several inspectors of lime and lime casks, now in office in this state, shall continue in office, according to the tenor of their respective appointments.

Inspectors to continue in office. 1839, 403, § 3.

SECT. 2. Whenever any vacancy shall occur in the office of inspector in any town, it shall be the duty of the governor, with advice of the council, to supply such vacancy; and there shall be but one inspector in any town.

Future appointments. 1839, 403, § 3.

SECT. 3. Each inspector shall be a citizen of, and resident in, the town, in which he is inspector; and shall hold his office for the term of four years, unless sooner removed by the governor and council.

Qualifications and term of office. 1839, 403, § 3.



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Oath and bond.  
1839, 403, § 3.

SECT. 4. Each inspector, before entering on the duties of his office, shall be duly sworn ; and give bond with sufficient sureties, to the treasurer of the county, in which he resides, for the faithful performance of his duty, in the respective sums mentioned in the following section.

Amount of bonds in different towns.  
1839, 403, § 3.

SECT. 5. The inspector in, and for, the town of Thomaston, in the sum of ten thousand dollars. The inspectors in, and for, the towns of Warren and Camden, in the sum of five thousand dollars each ; and the inspectors of each other town, in the sum of two thousand dollars ; each of which bonds shall be approved by the county commissioners, in and for the county, in which the town is situated.

Of deputy inspectors.  
1839, 403, § 3.

SECT. 6. Each inspector, so qualified, shall have power to appoint, in the town where he resides, as many deputy inspectors, as may be necessary, for whose fidelity he shall be answerable ; and he shall take from each of them a bond to himself, with sufficient sureties in the sum of one thousand dollars ; and each of them shall also be duly sworn.

Inspector's duties.  
1839, 403, § 4.

SECT. 7. It shall be the duty of each inspector by himself or his deputy, to inspect all lime manufactured in the town, where he resides, at the time, the same shall be filled into casks, at the kiln, where it is burnt ; and to inspect the casks, into which the same shall be put, and to see that the lime and casks do, in all respects, conform to the provisions of this chapter ; and that the casks are well filled with such lime, and to brand each cask, when so filled, [and] on one of the heads thereof, with the name of the [town], where the lime was burnt, and the first letter of the christian name, and the surname at length of the inspector or deputy, with the word, *inspected*.

Penalties for his misconduct  
1839, 403, § 4.

SECT. 8. If any such inspector, or deputy inspector, shall so brand any lime cask, the contents of which he has not inspected, or shall brand any such cask, which, or the contents of which, do not, in all respects, conform to the provisions of this chapter, or shall permit any other person to use his brands in violation, or evasion thereof, every such inspector, or deputy inspector, shall forfeit and pay the sum of one dollar for every cask, so illegally branded by him or with his brands ; and shall also be liable to pay to any person, injured by such neglect or misdoings, such damages as he may have sustained thereby : and the action for the recovery of such damages, when the misdoings were on the part of the deputy, may be brought against him, or the inspector, who appointed him.

Quality of lime for sale, or exportation.  
Kind of casks.  
1839, 403, § 1.

SECT. 9. No lime, manufactured in this state, shall be sold exposed to sale, or shipped on board any vessel, in casks, but such only as shall be well burnt and pure, and contained in good and sufficient casks, made of sound and seasoned staves and heading with at least ten good and strong hoops on each cask well driven and secured with nails, and duly inspected ; the staves of said casks to be made of sawed or rift timber, and not less than thirty inches in length, and not less than one half an inch thick on the thin edge ; and each of the heads to be not less than three fourths an inch thick, and well crozed in ; and each hoop to be not less than one inch wide, in the narrowest part ; and each cask to

not less than twenty six and a half inches in length between the heads, and seventeen inches in width between the chimes, and not less than twenty inches in the clear on the inside at the bilge, at the time of inspection; and made in a workmanlike manner to hold lime. CHAP. 51.

**SECT. 10.** Each lime cask shall be branded, on the outside of the bilge, with the first letter of the christian name, and the whole of the surname, of the manufacturer thereof. Casks to be branded with the maker's name. 1839, 403, § 2.

**SECT. 11.** If any person shall sell, or expose to sale, or shall purchase any lime casks, not conformable to the provisions aforesaid, he shall incur a penalty of twenty cents for each cask so sold, exposed to sale, or purchased, to the use of the person who may sue for the same; and a lien is hereby created on such lime casks, for the payment of such penalty and costs, and shall continue good against all prior attachments, or a sale by the owner of such casks; provided the same shall be attached in the suit brought to recover such penalty, within three months after the same shall be incurred; and such casks may be sold on the execution in such action, as in common cases of sale of goods on execution. Penalty for selling, or buying, illegal casks. 1839, 403, § 2. Lien.

**SECT. 12.** If any person shall sell, or expose to sale, or ship, or receive on board of any vessel, in casks, any lime, other than such as is contained in casks made, marked and branded according to the provisions of this chapter, he shall forfeit one dollar for each cask so sold, exposed to sale, or shipped, or received on board any vessel. For selling, &c. lime in casks, not legally made, marked and branded. 1839, 403, § 6.

**SECT. 13.** If, after any cask containing lime has been branded as aforesaid, any person shall shift the contents thereof, and put therein other lime, with design to sell the same, he shall forfeit ten dollars for each cask of lime, so shifted. For fraudulently shifting contents of casks. 1839, 403, § 7.

**SECT. 14.** All the penalties before mentioned may be recovered by, and to the use of, any person, who shall sue for the same. How penalties recovered. 1839, 403, § 7.

**SECT. 15.** When any judgment has been recovered against any inspector, or deputy inspector, for penalties or damages, on account of any misdoings in his office, and the execution issued on such judgment has been returned unsatisfied, the judgment creditor may avail himself of the benefit of the inspector's bond to the county treasurer, who shall give the creditors a copy thereof on request, in the like manner, as a judgment creditor of a sheriff or coroner may, of the official bond of such officer given to the state treasurer; and such proceedings shall be had, prior to, and in the conduct of the suit, as are prescribed in chapter one hundred and four. Remedy on inspector's bond. 1839, 403, § 9.

## CHAP. 52.

## CHAPTER 52.

## OF POT AND PEARL ASHES.

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| <p>SECT. 1. Inspector and deputies, to continue.</p> <p>2. How vacancy to be filled.</p> <p>3. Inspector's oath and bond.</p> <p>4. Of his deputies.</p> <p>5. Mode of inspection.</p> <p>6. Description of casks.</p> <p>7. Manufacturer to brand each cask.</p> <p>8. Process of inspection, packing, branding, &amp;c.</p> <p>9. His right to seize, on board vessels.</p> | <p>SECT. 10. Penalty for shipping ashes, not inspected.</p> <p>11. For obstructing the inspector, while searching.</p> <p>12. For unnecessary delay by the inspector.</p> <p>13. For falsely branding, by the manufacturer.</p> <p>14. For shifting contents of casks, &amp;c.</p> <p>15. Appropriation of penalties.</p> <p>16. Annual returns.</p> |
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Inspector and deputies, to continue.  
1821, 151, § 1.

How vacancy to be filled.  
1821, 151, § 1.

Inspector's oath and bond.  
1821, 151, § 1.

Of his deputies.  
1821, 151, § 1.

Mode of inspection.  
1836, 207, § 1.

Description of casks.  
1821, 151, § 2.

Manufacturer to brand each cask.  
1821, 151, § 3.

Process of inspection, packing, branding, &c.  
1821, 151, § 4.

SECTION 1. The inspector of pot and pearl ashes for the state, and his deputies, shall continue to hold their respective offices, according to the terms of their appointment.

SECT. 2. When a vacancy shall occur in the office of inspector of pot and pearl ashes, it shall be the duty of the governor, with advice of the council, to appoint some person, well skilled in the knowledge and properties of the same, to supply such vacancy, and who shall be removable at the pleasure of the executive.

SECT. 3. Before entering on the duties of his office, he shall be duly sworn; and shall give bond, with sufficient sureties, to the treasurer of the state, in the penal sum of three thousand dollars, for the faithful discharge of the duties of his office.

SECT. 4. When so qualified, he shall appoint deputy inspectors in every seaport town, where pot and pearl ashes are exported, and such other places, as he shall judge necessary; for all of whom he shall be answerable, and shall take bonds, with sureties, from them, for the faithful discharge of their duty; and they shall be duly sworn.

SECT. 5. The inspector and his deputies shall sort pot and pearl ashes into four sorts, if necessary, which shall be distinguished by the words, *first sort extra*, and *first, second, and third*, sorts.

SECT. 6. Every cask, in which such ashes shall be packed for exportation, shall be made of sound and seasoned oak or white ash staves and heading, full bound, twenty nine inches long, and nineteen inches diameter in the head; and of such weight in proportion to its contents, as will amount, as near as may be, to fourteen per cent. tare thereon.

SECT. 7. Every manufacturer of said ashes shall brand each cask, with the initial letters of his christian name, and surname at full length, with the name of the town, where manufactured, before the same shall be removed from the manufactory; under penalty of one dollar, for each cask removed without being so previously branded.

SECT. 8. The inspector shall start the ashes out of the casks, and carefully examine, try and inspect the same, and put each sort by itself in tight new casks, well hooped and coopered, which he shall distinguish, if necessary, in the manner prescribed in the fifth section, or by the words, *first sort, second sort* or *third sort*, with the word *pot* or *pearl* ashes, as the case may be, branded in plain

legible letters, together with the letters of his name, and the place where inspected; and also the word, MAINE, at full length on each cask; and the inspector or deputy, at the time of starting pot or pearl ashes for inspection, shall weigh the cask, and mark the weight with a marking iron, on each head.

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**SECT. 9.** Every inspector shall have power to enter, with, or without, a warrant, on board of any vessel in the harbor, where such inspector is authorized to perform duty; and, on discovering any cask of pot or pearl ashes, not branded as before directed, he may seize and carry away, and secure the same for trial, as forfeited property, to be proceeded against according to law.

His right to seize, on board vessels.  
1821, 151, § 5.

**SECT. 10.** No person shall ship any such ashes for exportation, before the same shall have been examined and inspected, as before mentioned; and the master of any such vessel, who shall receive such casks on board, not having been duly inspected and branded, shall forfeit twenty dollars.

Penalty for shipping ashes, not inspected.  
1821, 151, § 4, 5.

**SECT. 11.** Any master of a vessel or other person, who shall obstruct the inspector, in performing his duty in searching such vessel, shall forfeit for each offence thirty dollars.

For obstructing the inspector, while searching.  
1821, 151, § 5.

**SECT. 12.** Any inspector, when applied to, to inspect any pot or pearl ashes, unreasonably refusing, or delaying, to proceed and inspect the same, for the space of three hours, shall forfeit the sum of five dollars.

For unreasonable delay, by the inspector.  
1821, 151, § 6.

**SECT. 13.** If any person shall brand any cask of pot or pearl ashes, manufactured by himself, with the name of another person than his own, or brand any such cask, belonging to another, with his own name, or shall counterfeit any brand belonging to, or proper to be used by, said inspector or any of his deputies, or brand any cask of pot or pearl ashes, with any brand of such inspectors, or with any counterfeit brand, he shall forfeit and pay, for each offence, two hundred dollars.

For falsely branding by the manufacturer.  
1821, 151, § 7.

**SECT. 14.** If any person shall empty any cask of pot or pearl ashes, inspected or branded according to the provisions of this chapter, and put in, any other pot or pearl ashes, for sale or exportation, without first cutting out said brand, he shall forfeit and pay two hundred dollars.

For shifting contents of casks, &c.  
1821, 151, § 8.

**SECT. 15.** All penalties above twenty dollars, and under sixty dollars, when recovered, shall be to the use of the person, suing for the same; and all of sixty dollars, or upwards, shall be one half to the prosecutor, and the other to the state; and one half the proceeds of all forfeited property shall be to the use of the state, and the other half, to the use of the seizing officer.

Appropriation of penalties.  
1821, 151, § 9.

**SECT. 16.** Every inspector of pot and pearl ashes shall annually, in the month of May, make a return to the secretary of state's office, of the number of casks of pot and pearl ashes, naming the number of each brand, and the weight of each specific quality, inspected by him or his deputies; said returns to be made up to the first day of May of each year; and the deputy inspectors shall make seasonable returns to the inspector, to enable him to make his returns.

Annual returns.  
1821, 151, § 12.

## CHAPTER 53.

## OF THE INSPECTION OF BUTTER AND LARD.

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| <p>SECT. 1. Inspector, now in office, to continue.</p> <p>2. Future appointments.</p> <p>3. Oath and bond.</p> <p>4. Appointment of deputies.</p> <p>5. Their bond and oath.</p> <p>6. When butter or lard must be inspected.</p> <p>7. Manner of inspecting.</p> <p>8. Cask, &amp;c. to be marked with the quality.</p> <p>9. Description of casks, kegs or firkins.</p> <p>10. Casks to be filled with brine, weighed and marked.</p> <p>11. Collector to be furnished with a certificate, on exportation.</p> | <p>SECT. 12. Form of certificate and master's or owner's oath.</p> <p>13. Affidavit of master or owner, as to the place of intended exportation.</p> <p>14. Effect of inspection, had in another state.</p> <p>15. Penalty for unlawful exportation.</p> <p>16. Seizure by warrant, on board of vessel.</p> <p>17. Penalty for delay, by inspector.</p> <p>18. For counterfeiting brand.</p> <p>19. For shifting contents of marked casks.</p> <p>20. Appropriation of penalties.</p> <p>21. Annual returns.</p> |
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Inspector, now in office, to continue.  
1821, 149, § 1.

Future appointments.  
1821, 149, § 1.

Oath and bond.  
1821, 149, § 1.

Appointment of deputies.  
1821, 149, § 1.

Their bond and oath.  
1821, 149, § 1.

When butter or lard must be inspected.  
1821, 149, § 2.  
1828, 378, § 1.  
Manner of inspecting.  
1821, 149, § 2.

Cask, &c. to be marked with the quality.  
1821, 149, § 2.

SECTION 1. The inspector for the state, of butter and lard, who is now in office, and his deputies, shall continue in office, according to their respective commissions or appointments.

SECT. 2. Whenever a vacancy in the office of inspector shall occur, it shall be the duty of the governor, with advice of the council, to appoint some person, skilled in the knowledge and properties of butter and lard, to supply the vacancy; who may be removed from office at the pleasure of the governor and council.

SECT. 3. Before entering on the duties of his office, such inspector shall be duly sworn, and give bond, with sufficient sureties, to the state treasurer, in the sum of one thousand dollars, for the faithful discharge of his duty.

SECT. 4. When thus qualified, he shall appoint, in every seaport town, where butter and lard are exported, one or more deputy inspectors thereof, and in such other places as he may judge necessary, for whom he shall be answerable.

SECT. 5. Each deputy shall give bond to the inspector, in the sum of five hundred dollars, for the faithful performance of his duty; and shall be duly sworn.

SECT. 6. No butter or lard shall be exported, except to any of the states east of New York, until the same shall have been examined by the inspector or his deputy, in the following manner:

SECT. 7. He shall examine the casks, kegs or firkins containing the commodity intended for exportation, and, with a hollow iron searcher, shall, from one side of the head of such cask, keg or firkin, perforate from one head to the other, and thereby draw out so much butter or lard, as shall determine the quality of the whole; and see that it is preserved with a due proportion of good fine salt, sweet, and, in all respects, fit to be exported to any foreign market, without danger of spoiling.

SECT. 8. Every cask, keg or firkin of butter and lard, which, according to the inspector's best judgment, appears good and merchantable, he shall distinguish according to the quality, either by the words *first*, *second*, or *third*; and all other by the word *refuse*;

and it shall be branded in plain legible letters, with the word, MAINE, and the name of the town, where it was inspected, and also with the initial letters of the christian, and surname of the inspector at large; and also with the word *butter*, or *lard*, as the case may be.

SECT. 9. Every cask, keg and firkin, in which butter or lard shall be exported, except to those states, which are east of New York, shall be made of sound and seasoned white oak or ash staves and heading, full bound, twelve and a half inches in length, and eight and a half inches in diameter, in the head; or fifteen inches in length and ten and a half inches diameter in the head; kegs, twelve inches long, and seven and a half inches diameter in head, or ten inches long, and six inches head.

SECT. 10. Each cask, keg and firkin, before any butter or lard shall be packed therein, shall be filled with strong brine, which shall remain therein three days. As soon as the brine is emptied from such cask, keg or firkin, it shall be weighed by the owner of the butter or lard, who shall, with a marking iron, mark, on one of the heads thereof, the full weight of such cask, keg or firkin, and shall brand or imprint with a burning iron, the initial letters of his christian name, and his surname at large: and if he shall falsely mark the same, he shall forfeit three dollars.

SECT. 11. No butter or lard shall be exported from this state, except to any other state east of New York, unless the master or owner shall produce to the collector, or other officer, authorized by law to clear vessels, a certificate from the inspector or his deputy, that the same has been inspected and branded, according to the directions of this chapter.

SECT. 12. Each certificate shall express the number of casks, or firkins, and their weight; and the master or owner of the vessel, in which such butter and lard is so exported, shall, on producing such certificate, take and subscribe the following oath, before the officer authorized as aforesaid:

"I, \_\_\_\_\_, do swear, that according to the best of my knowledge and belief, the certificate, hereto annexed, contains the whole quantity of butter, (or lard, as the case may be,) on board \_\_\_\_\_, master, except such, if any, as has been inspected elsewhere, and is not subject to re-inspection, or such as is shipped, and to be exported to a state or states east of New York; and that no butter, (or lard as the case may be), is shipped on board such vessel, for the ship's company, on freight, or on cargo, but what is inspected and branded, according to the law of this state, except as before mentioned. So help me God."

SECT. 13. Whenever the master of a vessel, having on board any butter or lard, not inspected, or the shipper, or owner, of the same shall make oath, in writing, before any magistrate, that the same has been shipped for the purpose of being transported to some port or place in the United States, east of New York, and shall deliver such affidavit to the inspector of butter and lard, or his deputy, when requested, such butter and lard shall be presumed to be shipped for such purpose; but if such affidavit shall not be so delivered on request, the presumption shall be, that the same were intended to be transported and delivered elsewhere; and no dam-

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Description of  
casks, kegs or  
firkins.  
1821, 149, § 3.  
1824, 263, § 2.

Casks to be fill-  
ed with brine,  
weighed and  
marked.  
1821, 149, § 4.

Collector to be  
furnished with  
a certificate, on  
exportation.  
1821, 149, § 5.

Form of certifi-  
cate and mas-  
ter's or owner's  
oath.  
1821, 149, § 5.

Affidavit of  
master or own-  
er, as to the  
place of intend-  
ed transportation.  
1823, 378, § 2.

**CHAP. 53.** ages shall be recovered against the inspector for taking and detaining the same, till after such affidavit shall be offered to the detaining officer.

Effect of inspection, had in another state. 1821, 276, § 1

**SECT. 14.** All butter and lard, which may have been inspected in any other of the United States may be exported from any port in this state, to any foreign port, without being subject to inspection in this state, any thing contained in this chapter notwithstanding.

Penalty for unlawful exportation. 1821, 149, § 6.

**SECT. 15.** If any person, or master of any vessel, shall export, or ship for exportation, any butter or lard, contrary to the provisions of this chapter, he shall forfeit and pay five dollars, for every cask exported, or thus shipped.

Seizures by warrant, on board of vessel. 1821, 149, § 6.

**SECT. 16.** Any justice of the peace may seize any butter or lard on board a vessel, as aforesaid, for exportation, contrary to the provisions of this chapter, by his warrant to an officer, and secure the same for trial, as forfeited, according to law; and every person, required to aid such officer in executing the warrant, and refusing his aid, shall forfeit five dollars.

Penalty for delay, by inspector. 1821, 149, § 7, 8.

**SECT. 17.** If any inspector shall unreasonably refuse or delay, for the space of three hours, to inspect any butter or lard, or to brand it, when requested, he shall forfeit and pay the sum of five dollars, for each and every offence.

For counterfeiting brand. 1821, 149, § 9.

**SECT. 18.** If any person shall counterfeit, or fraudulently use, any brand belonging to, or proper to be used by, any inspector, he shall forfeit and pay ten dollars for each offence.

For shifting contents of marked casks. 1821, 149, § 10.

**SECT. 19.** If any person shall empty any cask, keg or firkin of butter or lard, inspected and branded according to this chapter, and put into it any other butter or lard, for exportation, without cutting out the said brands or marks, he shall forfeit ten dollars, for each such cask, keg or firkin.

Appropriation of penalties. 1821, 149, § 11.

**SECT. 20.** All fines, herein mentioned, may be recovered, with costs, by any person, who may sue for the same.

Annual returns. 1821, 149, § 12.

**SECT. 21.** The inspector, annually, in the month of January, shall make a return of the number of the casks of different qualities of the above articles, branded by him and his deputies, and the weight of the respective kinds, to the office of the secretary of state. The above returns to be made up to the first day of May, annually: and his deputies shall make their returns to the inspector, at such previous time as he may require.

**CHAPTER 51.**

OF THE INSPECTION OF FISH.

- SECT. 1. Inspectors of fish, to be appointed by the governor.
- 2. To be sworn and give bonds.
- 3. Selectmen to examine bonds yearly.
- 4. Remedy on the bond, to parties aggrieved.

- SECT. 5. Of inspection in towns, where no inspector dwells.
- 6. What pickled fish are merchantable, and how to be packed.
- 7. Contents of casks, and proportions of salt.

- SECT. 8.** Of the different qualities, and modes of branding.
9. How smoked herrings shall be assorted.
10. And branded accordingly.
11. Of magdalen herrings.
12. Owner to furnish his own brand.
13. Each kind packed separately.
14. Requisites of casks, for pickled fish.
15. Boxes, for alewives and herrings.
16. Of scaled herrings, packed.
17. Alewives and herrings, when merchantable.
18. Of small fish usually packed whole, in dry salt.
19. Forfeiture for selling, or exporting, fish uninspected, &c.
- SECT. 20.** On shipping, master or owner to furnish the collector with the inspector's certificate.
21. Master's or owner's affidavit.
22. Penalty for receiving fish, uninspected, &c. with intent to export.
23. The same liable to seizure. Process.
24. Subsequent inspection.
25. Forfeiture, for shifting contents of casks, &c.
26. For fraudulently branding.
27. Annual returns.
28. Forfeiture, for neglect thereof.
29. Recovery of penalties.
30. Fees, how paid.
31. Inspectors, continued in office.

**SECTION 1.** The governor with advice of the council, shall, from time to time, as occasion may require, appoint, in each town and plantation, where pickled fish or smoked alewives and herrings are cured, or packed for exportation, one or more persons, skilled in the quality of the same, to be inspectors of such fish; who shall hold their offices, during the pleasure of the governor and council, not exceeding four years, unless re-appointed.

Inspectors of fish, to be appointed by the governor.  
1821, 150, § 1.

**SECT. 2.** Every such inspector, before entering upon the duties of his office, shall be duly sworn; and shall give bond with sufficient sureties to the treasurer of the town or plantation, for which he is appointed, to the satisfaction of the selectmen of the town, or assessors of the plantation, in the penal sum of not less than five hundred, nor more than one thousand dollars, for the faithful performance of his official duties.

To be sworn and give bonds.  
1821, 150, § 1.

**SECT. 3.** Such selectmen or assessors, as the case may be, shall, at least once a year, examine the bonds given by the said inspectors; and if the bond of any inspector be not, in their opinion, sufficient, they shall forthwith notify him of the same; and if he shall, for thirty days after such notice, neglect to give a bond satisfactory to them, they shall give information of such neglect to the governor, whose duty it shall be, thereupon, to remove such inspector from office.

Selectmen to examine bonds yearly.  
1821, 150, § 1.

**SECT. 4.** Any person, injured by the neglect or misdoings of any inspector, on tendering, to such treasurer, a reasonable indemnity against the costs, shall be entitled to bring an action on such inspector's bond, in the name of the treasurer, for his own use, and to have a copy of the bond therefor; and, if judgment shall be rendered thereon for the plaintiff, execution shall issue for such sum, in damages, as shall be found due to the person, for whose use such action is brought; and the sum, awarded in damages, shall be entered by the clerk of the court on the original bond, to remain in the custody of the treasurer.

Remedy on the bond, to parties aggrieved.  
1821, 150, § 1

**SECT. 5.** If, at any time, it be necessary, that fish should be inspected in any town or plantation, where no inspector resides, any such officer, in the county, may inspect and brand the same, in the same manner, and under the same obligations, as if in his own town,

Of inspection in towns, where no inspector dwells.  
1822, 201, § 1.



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What pickled fish are merchantable, and how to be packed.

1834, 114, § 1.  
1839, 364, § 1.

Contents of casks, and proportions of salt.

1834, 114, § 1.  
1839, 364, § 1.

Of the different qualities, and modes of branding.

1821, 150, § 14.  
1834, 114, § 1.  
1839, 364, § 1.

How smoked herrings shall be assorted.

1834, 114, § 2.

And branded accordingly.

1834, 114, § 2.

Of magdalen herrings.

1834, 114, § 2.

Owner to furnish his own brand.

1834, 114, § 1.

Each kind packed separately.

1834, 114, § 1.

Requisites of casks for pickled fish.

1821, 150, § 2.

**SECT. 6.** Every inspector, who shall inspect any kind of fish, pickled for barreling, shall see that they are, in the first instance, well struck with salt or pickle, and preserved sweet, free from rust, taint or damage; and such of said fish, as are of good quality and in good order, shall be packed in tierces, barrels, half barrels, quarter barrels, and tenths of barrels, or kids.

**SECT. 7.** Each tierce shall contain three hundred pounds; each barrel, two hundred pounds; each half barrel, one hundred pounds; each quarter barrel, fifty pounds; and each tenth or kid, twenty pounds: and the same shall be packed, with clean and good coarse salt, at the rate of thirty five pounds for every two hundred pounds of fish: each cask, thus packed and headed up, shall then be filled up with clear strong pickle.

**SECT. 8.** Each cask, thus prepared, and the contents free from taint, rust or damage, shall be branded by the inspector, with the name of the kind of fish, contained in it; and those of the best quality, and caught in the right season, with the mark, *No. 1*; the best, and thickest, of those that remain, shall be marked, *No. 2*; and the residue, *No. 3*: none being allowed, under either mark, except such, as are sweet and wholesome. The inspector shall also brand, in plain letters, on the head of every such cask of packed fish, the weight; the initials of his christian name, and his surname at large; the name of the town, for which he is appointed; the letters *ME.*; the name of the owner; and an abridgment of the month, when packed, and the year in figures.

**SECT. 9.** All smoked herrings shall be sorted by the inspector, and denominated according to their quality, as follows, viz: *No. 1* shall consist of all the largest and best cured fish, of not less than eight inches in length; *No. 2* of the smaller, but well cured fish, not less than seven inches long: and in both cases all those shall be taken out as refuse, which are belly broken, tainted, scorched or burnt, slack salted, or not sufficiently smoked.

**SECT. 10.** Every box of herrings, so inspected, shall be branded on the top, by the inspector, with the initials of his christian name, his surname at length, the name of the owner and of the town for which the inspector was appointed, with the letters *ME.*; and also with the quality of *No. 1* or *No. 2*.

**SECT. 11.** If the herring, so inspected, shall be of the species, commonly called magdalen herring, the inspector shall brand the box with that name or an abridgment thereof, so that the species may be distinguished.

**SECT. 12.** The owner of all smoked and pickled fish, when so required by the inspector, shall furnish a brand, containing the initials of his christian name, and the whole of his surname, for the purpose of being stamped upon the casks and boxes, containing such fish.

**SECT. 13.** Each cask or box shall be filled with fish, of one and the same kind.

**SECT. 14.** All tierces, barrels, or smaller casks, made or used for the purpose of packing, or containing pickled fish, shall be made of sound, well seasoned, white oak, white ash, spruce, pine or chestnut staves of rift timber, with headings of either of such kinds of

wood, sound and well planed and seasoned, and the heads, if of pine, free from sap : the same to be well hooped with at least three strong hoops, on each bilge, and three also, on each chime ; the barrel staves to be twenty eight inches, in length, and the heads to be seventeen inches, between the chimes, and made in a workmanlike manner, to hold pickle ; and branded on the side, near the bung, with the name of the maker or owner thereof. The tierces shall contain not less than forty five, nor more than forty six gallons, each ; the barrels, from twenty nine to thirty gallons each ; and the aliquot parts of a barrel to be in the same proportion.

SECT. 15. All boxes, for packing smoked alewives and herrings, shall be made of good sound boards, sawed and well seasoned, the top, bottom and sides, of not less than half inch boards, and the ends of not less than three quarters of inch boards ; securely nailed with not less than eight six penny nails, and sixteen four penny nails, to each box ; and the top to be planed ; and they shall be seventeen inches, in length, eleven inches, in breadth, and six inches, in depth, in the clear, excepting as provided in the following section.

Boxes for alewives or herrings.  
1821, 150, § 3.

SECT. 16. On request of any such owner, any such inspector may inspect herrings, scaled, and cured in a superior manner, and packed in boxes eighteen inches long, nine inches wide, and seven inches deep in the clear ; which boxes shall be made and branded on the cover, in the same manner, as other boxes for herrings are now made and branded ; excepting that instead of *No. 1* and *No. 2*, the word *scaled* shall be branded thereon : and the inspection and exportation of said herrings shall be subject to the same laws and regulations, as are prescribed for other herrings.

Of scaled herrings, packed.  
1831, 488, § 1.

SECT. 17. Alewives or herrings, marked and packed, shall not be considered merchantable, unless salted and smoked sufficiently to cure and preserve the same, and afterwards closely packed in boxes, in clear and dry weather.

Alewives and herrings, when merchantable.  
1821, 150, § 3.

SECT. 18. All small fish usually packed whole, with dry salt, shall be put in good casks of the size and materials, mentioned in the sixth and seventh sections, packed closely therein and well salted ; the casks to be filled full, with the fish and the salt ; putting no more salt with the fish, than is necessary for their preservation : and the inspector shall brand all such casks, with the name and quality of the inspected fish, as described in the eighth section.

Of small fish usually packed, whole, in dry salt.  
1821, 150, § 6.

SECT. 19. If any person shall sell, in this state, or export therefrom, any fish in casks or boxes, not inspected, packed and branded, agreeably to the provisions of this chapter, or any tainted or damaged fish, knowing them to be such, he shall forfeit ten dollars for every hundred weight, thus sold or exported ; provided, that none of the penalties, declared by this chapter, shall be incurred on account of any good and wholesome fish, packed in kegs of less than ten gallons ; nor of any pickled, dry or smoked fish, imported into this state, from any other state or country, having been there duly inspected and branded, agreeably to the laws of such place.

Forfeiture for selling, or exporting, fish un-inspected, &c.  
1821, 150, § 10,  
12.  
1834, 114, § 1.  
1839, 364, § 2.

SECT. 20. No pickled fish, in casks, and no smoked alewives or herrings, in boxes, shall be shipped from this state, unless the master or owner of the vessel shall produce to the officer, author-

On shipping, master, or owner, to furnish the collector

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with the inspector's certificate. 1821, 150, § 8.

ized to clear out the same, a certificate from the inspector, that the same have been inspected, packed and branded, according to the directions of this chapter; and the certificate shall express the number of tierces, or smaller casks, and the number of boxes, thus shipped, the kind and quality of fish they contain, with the name of the master and owner, and the name of the vessel, into which such fish are received for exportation.

Master's or owner's affidavit. 1821, 150, § 8.

**SECT. 21.** Every such master or owner shall take and subscribe the following oath, before the officer authorized as aforesaid:

"I, A. B., do swear, according to the best of my knowledge and belief, that the certificate, hereunto annexed, contains the whole quantity of pickled fish, packed in barrels or other casks, and of smoked alewives and herrings, on board the —, — master; and that no pickled fish, nor smoked alewives, nor herrings are shipped on board said vessel, for the ship's company, nor on freight nor cargo, but what are inspected and branded, according to the laws of this state, or exempted by the provisions thereof. So help me God."

Penalty for putting on board or receiving fish, uninspected, &c. with intent to export. 1821, 150, § 11. 1833, 57. 1834, 100.

**SECT. 22.** If any master of a vessel or other person, shall put, or receive, on board of any vessel or carriage of conveyance, in order to transport the same from this state, any pickled fish, or cured or salted whole fish, packed or not packed, which shall not have been inspected and branded, agreeably to the provisions of this chapter, excepting smoked alewives or herrings, not packed, and other fish described in the proviso of section nineteen, he shall forfeit at the rate of not less than five dollars, nor more than ten dollars, for each and every hundred pounds of such uninspected fish.

The same liable to seizure. Process. 1821, 150, § 9.

**SECT. 23.** When any such prohibited fish shall be on board of any such vessel or carriage, as described in the preceding section, any justice of the peace in the county, where such vessel or carriage may be, may issue his warrant to the proper officer, and authorize him to seize and secure said fish and convey the same to any inspector of fish, residing within a convenient distance, for inspection; and every person required by such officer to give necessary aid in the service of such warrant, who shall neglect or refuse so to do, shall forfeit, for such neglect or refusal, five dollars to the use of the person prosecuting, to be recovered in an action of debt.

Subsequent inspection. 1821, 150, § 9.

**SECT. 24.** Such inspector shall thereupon open, inspect, pack and brand such fish, in the manner prescribed in this chapter; and may detain the same, till all lawful and reasonable charges of seizure, inspection and packing shall be paid.

Forfeiture for shifting contents of casks, &c. 1821, 150, § 12. 1834, 114, § 1.

**SECT. 25.** If any person shall take from any cask or box any pickled, cured or smoked fish, inspected and branded, as provided in this chapter, and substitute other fish therefor; or intermix other fish with a fraudulent intent, he shall forfeit fifteen dollars for each box or cask, wherein the fish are so changed or intermixed.

For fraudulently branding. 1821, 150, § 13.

**SECT. 26.** If any inspector shall brand any cask, the contents of which he has not inspected, packed, salted and coopered, or any boxes of smoked alewives or herrings, which he shall not have inspected, packed and nailed, according to the requirements of this chapter, or if he shall permit other persons to use his brands in evasion thereof, he shall forfeit for every cask or box, so branded, twenty dollars.

SECT. 27. The several inspectors of pickled and smoked fish in this state shall, on or before the first Wednesday of January, annually, make a return, under oath, into the office of the secretary of state, of all fish by them inspected for the year preceding; designating, therein, the number of boxes, or barrels or other casks, and also the various sorts, together with the place of inspection.

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Annual returns.  
1833, 75.  
1839, 364, § 3.

SECT. 28. Any such inspector, who shall neglect to make his return, as aforesaid, shall forfeit a sum, not less than thirty, nor more than one hundred dollars, for every offence, to be recovered in an action of debt; one half to the state, and the other half to the person who may sue for the same.

Forfeiture for neglect thereof.  
1833, 75.

SECT. 29. All penalties and forfeitures, accruing by virtue of this chapter, not otherwise herein appropriated, shall be recovered in an action of debt; one half to the use of the person, who shall sue therefor, and the other half to the use of the town or plantation, where the offence shall have been committed.

Recovery of penalties.  
1821, 150, § 15.

SECT. 30. The inspector's fees shall, in the first instance, be paid by the owner of the fish; but such owner shall be entitled to recover the amount thereof, from the party purchasing or receiving the same, under the marks and brands aforesaid, in addition to the price thereof.

Fees, how paid.  
1821, 150, § 16.

SECT. 31. All inspectors now in office shall remain therein, under the tenure of their respective appointments, notwithstanding any thing in this chapter expressed.

Inspectors continued in office.

## CHAPTER 55.

### OF MANUFACTURE OF NAILS.

- SECT. 1. Inspector, to continue in office.
- 2. Vacancy to be filled by the governor.
- 3. Inspector's bond and oath.
- 4. Deputies.
- 5. Duties.
- 6. Rules for marking nail casks.
- 7. Certificate.
- 8. Wrought nails, how sold.
- 9. Description of the casks.
- 10. No nails to be exported, uninspected.
- 11. Penalty for violation.

- SECT. 12. Penalty for inspector's delay.
- 13. Penalty for counterfeiting brands.
- 14. How cut nails and brads shall be packed.
- 15. Penalty for uninspected nails or brads, offered for sale or shipped.
- 16. For counterfeiting brands.
- 17. For illegally receiving for exportation.
- 18. Appropriation of penalties.
- 19. Deputies' returns to the inspector.
- 20. Annual returns of the inspector.

SECTION 1. The inspector of nails, now in office, shall continue therein, according to the tenor of his appointment.

Inspector to continue in office.  
1821, 157, § 1.

SECT. 2. When a vacancy in the office shall occur, the governor with advice of the council, shall appoint a suitable person to supply the vacancy.

Vacancy to be filled by the governor.  
1821, 157, § 1.

SECT. 3. Every inspector, so appointed, shall give bond to the state, with sufficient sureties, in such sum as the governor and council direct, for the faithful discharge of the duties of his office; and he shall also, before entering on such duties, be duly sworn.

Inspector's bond and oath.  
1821, 157, § 2.

- CHAP. 55.** **SECT. 4.** He may appoint one or more deputies in any town, where they may be necessary, and each deputy, so appointed, shall give bond to the state; and be duly sworn, in the same manner as the inspector.
- SECT. 5.** It shall be the duty of the inspector and each of his deputies, to examine every cask of wrought nails, which he shall be requested to inspect, by opening the same, turning out the nails contained therein, weighing them, and ascertaining the number of them, necessary to make a pound, their quality, both as to the iron and workmanship; and [he] shall mark or brand, on the head of such cask, the number thereof, the whole weight of the cask and nails, the weight of the cask only, or the tare; the number of nails necessary to make a pound, and also the quality thereof, viz: *first sort, second sort, and third sort, or refuse*; and shall then stamp his name at large and the title of his office.
- SECT. 6.** He shall not be obliged to mark or brand the head of any cask containing nails, thirty five of which shall weigh more than one pound, with the exact number of nails, to a pound; but, beginning at thirty five, he shall observe five as the progressive number, in the number of nails, necessary to weigh a pound, in any cask, which he shall inspect; always choosing and marking such progressive number, to which the number of nails, in a pound, nearest approaches.
- SECT. 7.** Each inspector shall give a certificate, expressing the number of the cask, the whole weight, weight of tare, and number of nails in a pound, with the quality of the nails.
- SECT. 8.** All wrought nails shall be sold by the pound, or by real thousands; delivering and receiving so many pounds for a thousand, as will produce ten net hundreds. All nail casks shall be made of sound timber.
- SECT. 9.** The inspector shall see, that all casks be well made, strong, and lined at both heads; each cask to have eight or more good hoops, and to contain no more than three hundred and fifty pounds of nails; bad casks shall be condemned, and deficient hoops he shall supply, at the expense of the person applying for inspection.
- SECT. 10.** No person shall export from this state by land, or water, any cask or package, or quantity of nails, not inspected and branded, as aforesaid, on pain of forfeiting the value thereof; and any master of a vessel, who shall receive such, on board for exportation, shall be liable to the like penalty.
- SECT. 11.** Any package or cask of wrought nails, made in this, or any other of the United States, which shall be brought into this state for sale, and put on board any vessel, or carriage, for conveyance from this state, or offered for sale, without first being inspected and branded, as before mentioned, shall be forfeited, and may be seized, libeled and condemned, as the law in such cases prescribes.
- SECT. 12.** If any inspector, on request, shall unnecessarily or unreasonably delay to make inspection of any casks of nails, he shall forfeit for each offence, the sum of four dollars.
- SECT. 13.** If any person shall counterfeit any inspector's brand, or, with such brand, mark any cask of nails, or put into any cask,

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Deputies.  
1821, 157, § 2.

Duties.  
1821, 157, § 1.

Rules for marking nail casks.  
1821, 157, § 3.

Certificate.  
1821, 157, § 4.

Wrought nails, how sold.  
1821, 157, § 4.

Description of the casks.  
1821, 157, § 5.

No nails to be exported, uninspected.  
1821, 157, § 6.

Penalty for violation.  
1821, 157, § 7.

Penalty for inspector's delay.  
1821, 157, § 8.

Penalty for counterfeiting brands.  
1821, 157, § 9.

duly branded, nails, which have not been duly inspected, with intent to export them, as aforesaid, he shall forfeit twenty dollars for each cask.

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SECT. 14. Cut nails and brads shall be packed in strong and seasoned casks, and well hooped, no cask containing more than three hundred pounds net, free from waste pieces of iron (unless refuse nails,) or fraudulent mixture, increasing the weight. The maker, who shall also be owner of such nails, shall brand the initial of his christian name, and his surname at large, on the side of the cask; also the town where the manufacturer resides, and the true weight of the tare of said cask, under the name of the town.

How cut nails and brads shall be packed. 1821, 157, § 10.

SECT. 15. If any cask, package or quantity of cut nails or brads, not inspected, as required, and branded, shall be offered for sale, or put on board any vessel or carriage, to be transported from the state, it shall be forfeited, and may be seized and disposed of, in the manner mentioned in the eleventh section; and the owner shall forfeit and pay one dollar for each pound of tare, more than is marked on the cask, and for every pound of scraps or waste, mixed with the nails or brads.

Penalty for un-inspected nails, or brads, offered for sale, or shipped. 1821, 157, § 11.

SECT. 16. If any person shall counterfeit any brand, used for marking, or destroy marks made by another person's brand, on any cask of cut nails or brads, and make a new mark by such counterfeit brand, or shift any cut nails or brads from one branded cask to another, he shall forfeit twenty dollars.

For counterfeiting brands. 1821, 157, § 12.

SECT. 17. If any master or owner of any vessel, or other person, shall receive on board such vessel or carriage, any quantity of cut nails or brads intended for transportation from the state, not being legally branded and marked, he shall forfeit a sum equal to their value.

For illegally receiving for exportation. 1821, 157, § 13.

SECT. 18. All penalties mentioned in this chapter, when recovered, shall belong, one half to the town, where the offence was committed, and the other half to him who shall sue, and recover the same.

Appropriation of penalties. 1821, 157, § 14.

SECT. 19. Every deputy inspector shall, once in three months, and oftener if required, make returns to the inspector, of the number of casks of nails, by him inspected, with the quantity of nails of each kind.

Deputies' returns to the inspector. 1821, 157, § 14.

SECT. 20. The inspector shall annually, on or before the first day of January, and oftener if required, make return, to the secretary of state, of the number of casks, and weight of wrought and cut nails, specifying the different quantities of each, by him and his deputies inspected, during the preceding year.

Annual returns of the inspector. 1821, 157, § 14.

CHAPTER 56.

OF TOBACCO AND ONIONS.

- SECT. 1. Inspectors of tobacco, to remain in office.
- 2. Vacancies to be filled by governor.
- 3, 4. Inspector's duties.
- 5. Mode of packing tobacco.
- 6. Casks to be weighed and marked.
- 7. Forfeiture for shipping before inspection.
- 8. Seizure.
- 9. Penalty for shifting contents of casks.
- 10. For fraud in inspection.

- SECT. 11. For branding by one, not an inspector.
- 12. For owner's falsely marking weight.
- 13. Inspector's certificate to be produced before clearance.
- 14. Appropriation of penalties.
- 15. Onions, in-bunches to be weighed.
- 16. Selectmen to appoint weighers.
- 17. Penalty for selling onions, not weighed.

Inspectors of tobacco to remain in office. 1821, 154, § 1.  
 Vacancies to be filled by governor. 1821, 154, § 1.

Inspector's duties. 1821, 154, § 1.

Same subject. 1821, 154, § 1.

Mode of packing tobacco. 1821, 154, § 2.

Casks to be weighed and marked. 1821, 154, § 7.

Forfeiture for shipping before inspection. 1821, 154, § 3.

SECTION 1. All inspectors of tobacco, now in office, shall continue therein, according to the terms of their appointment.

SECT. 2. Whenever a vacancy shall occur in the office of any inspector, in any seaport, or other exporting towns in the state, the governor, with advice of the council, shall appoint some skilful and disinterested person to supply the vacancy, who shall be duly sworn, impartially to perform the duties of his office.

SECT. 3. It shall be his duty to inspect all tobacco, intended to be exported from the state, by land or water, to any other of the United States; he shall open every cask containing the tobacco, and inspect it in four equal divisions, and shall take the casks from the tobacco, and with an iron bar or other sufficient instrument, lift one quarter, and then go through with the whole, until it shall be examined in four different parts, and see that it be properly dry, well cured, and not rotten or damaged, and of the weight, and packed in the manner, hereinafter mentioned.

SECT. 4. Such part, as appears damaged and unfit for exportation, shall be burned; and on every cask containing the required quantity, which, on inspection, shall be found to be well cured and not damaged, he shall mark with a burning iron the letters A P., with the name of the town where it shall be thus approved, the name of the inspector at large, and the letter I. at the end, denoting that the same has been inspected and approved.

SECT. 5. No tobacco shall be exported from this state, until it has been inspected and approved, as aforesaid, and packed in straight casks; each cask being four feet and four inches long, and two feet seven inches diameter at the head, containing not less than nine hundred, nor more than fourteen hundred pounds weight each; or if packed in half casks, each to contain not less than four hundred, nor more than six hundred pounds weight, unless such casks of tobacco shall appear to have been inspected and marked, according to the laws of some other state.

SECT. 6. Each cask, before any tobacco shall be packed therein, shall be weighed by the owner of the tobacco, who shall mark on one of the heads, with a marking iron, the full weight of it, and the initial letters of his name.

SECT. 7. If any owner of tobacco or his agent shall lade on board any vessel, bound to any port or place without the state, or

if any master of any such vessel shall receive, on board of her, any tobacco, contrary to the provisions of this chapter, he shall forfeit and pay the sum of thirty dollars; and all such tobacco, so laden or received, shall be forfeited.

SECT. 8. Any justice, on complaint to him, may issue his warrant to the sheriff or his deputy, or a constable, and he may seize and secure such tobacco, so that it may be libeled and disposed of according to law.

Seizure.  
1821, 154, § 3.

SECT. 9. If, after any cask of tobacco has been stamped or branded, as aforesaid, any person shall shift the contents, and put therein tobacco, which has not been inspected, he shall forfeit and pay fifteen dollars for each cask.

Penalty for shifting contents of casks.  
1821, 154, § 4.

SECT. 10. If any inspector shall be guilty of any neglect or fraud, in the inspection of tobacco, contrary to the provisions of this chapter, or brand any casks containing tobacco which he has not inspected, he shall forfeit and pay fifteen dollars for each cask.

For fraud in inspection.  
1821, 154, § 5.

SECT. 11. If any person, not being a sworn inspector of tobacco, shall presume to mark and brand any casks of tobacco, as above described, he shall forfeit and pay fifteen dollars for each cask, so branded.

For branding by one, not an inspector.  
1821, 154, § 6.

SECT. 12. If any owner of tobacco shall falsely mark the weight of any cask, in which his tobacco is intended to be packed, he shall forfeit and pay nine dollars for each cask, so marked.

For owners' falsely marking weight.  
1821, 154, § 7.

SECT. 13. No vessel, having on board any tobacco in casks, shipped for exportation, shall be cleared out at the custom house, until the master or owner shall produce a certificate from an inspector or prover, appointed and sworn as aforesaid, that the said tobacco has been lawfully inspected, according to the requirements of this chapter.

Inspector's certificate to be produced before clearance.  
1821, 154, § 9.

SECT. 14. All the above mentioned penalties, when recovered, shall belong, one half to the state, and the other half to him who shall sue for the same.

Appropriation of penalties.  
1821, 154, § 10.

SECT. 15. No onions in bunches shall be exported from the state, unless they shall weigh as follows, viz: rareripes, so called, two and a half pounds, and onions from the seed, three and a half pounds per bunch.

Onions in bunches to be weighed.  
1821, 154, § 11.

SECT. 16. The selectmen of each town, where onions are shipped, shall appoint one or more suitable persons, to weigh and give certificates of the weight; they shall be duly sworn to act truly and impartially.

Selectmen to appoint weighers.  
1821, 154, § 12.

SECT. 17. If any person shall expose, for sale, any onions in bunches, not so weighed and certified, he shall forfeit the same; one half of the proceeds to the use of the town, where the offence was committed, and the other half to the person, suing therefor; and the selectmen may cause the same to be libeled and sold, according to law.

Penalty for selling onions, not weighed.  
1821, 154, § 13.



## CHAPTER 57.

## OF EXPORTATION OF FLAX SEED.

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|---|---|
| SECT. 1. Present surveyors and inspectors, to continue. | SECT. 7. Penalty for receiving on board, before inspection. |
| 2. Vacancies to be filled by the governor.              | 8. Forfeiture of the article.                               |
| 3, 4. Their duties.                                     | 9. Penalty for shifting contents of casks.                  |
| 5. What flax seed may be exported.                      | 10. For misconduct of inspector.                            |
| 6. Certificate to be produced, before clearance.        | 11. Appropriation of penalties.                             |

Present surveyors and inspectors, to continue.

1821, 155, § 1.  
Vacancies to be filled by the governor.

1821, 155, § 1.

Their duties.

1821, 155, § 1.

Same subject.

1821, 155, § 1.

What flax seed may be exported.

1821, 155, § 1.

Certificate to be produced before clearance.

1821, 155, § 3.

Penalty for receiving on board, before inspection.

1821, 155, § 4.

Forfeiture of the article.

1821, 155, § 4.

Penalty for shifting contents of casks.

1821, 155, § 5.

SECTION 1. The several surveyors and inspectors of flax seed, who have been appointed in the seaport towns of this state, shall continue therein, according to the tenor of their appointments.

SECT. 2. When a vacancy shall occur in the office of any such surveyor and inspector, the governor, with consent of the council, may appoint a skilful and disinterested person to supply the vacancy, who shall be duly sworn.

SECT. 3. It shall be the duty of all such surveyors and inspectors, to inspect and survey all flax seed, intended to be laden on board any vessel, for foreign exportation; they shall open the casks, containing the same, and, if necessary, measure and shift the same into other casks, so as to examine the whole, to ascertain that it is clean and unmixed with other seed.

SECT. 4. Every cask, containing the measure hereinafter mentioned, of cleansed seed, he shall mark with a burning iron, and imprint thereon with it the mark, *Insp.* with the name of the town, where inspected and approved; the name of the surveyor, at large, and the letter, S. at the end thereof.

SECT. 5. No flax seed shall be exported from this state, to any port or place without the United States, but such as shall have been surveyed and well cleansed, and in casks, each containing seven bushels and one peck, or in casks, containing each one half of said quantity.

SECT. 6. No vessel, on board of which any flax seed shall be shipped for exportation, shall be cleared out at the custom house, till the master, or owner, thereof shall produce a certificate from such surveyor or inspector, as above described, that such flax seed has been surveyed and inspected, according to the provisions of this chapter; which certificate shall be granted without any fee.

SECT. 7. If the owner of any flax seed, or his agent, shall lade on board any vessel, or the master, or any mariner, of any vessel shall receive on board, any flax seed, not surveyed and inspected as this chapter requires, for the purpose of such exportation, he shall forfeit and pay the sum of twenty dollars for each bushel, so shipped.

SECT. 8. All such flax seed, so laden or received, shall be forfeited, and may be seized, libeled and sold in the manner pointed out, by law, respecting the forfeiture of any personal property.

SECT. 9. If, after any cask or vessel containing flax seed, has been approved and stamped, as before directed, any person shall shift the contents of such cask, and put therein any flax seed

which has not been surveyed and approved, he shall forfeit and pay **CHAP. 57.** the sum of thirty dollars for each cask, so shifted.

**SECT. 10.** If any such surveyor or inspector shall be guilty of any neglect or fraud, in surveying and inspecting any flax seed, or, in any other particular, neglect, or violate his duty and the provisions of this chapter, he shall forfeit the sum of thirty dollars, for every such neglect or offence. For misconduct of inspector. 1821, 155, § 6.

**SECT. 11.** The above mentioned penalties, when recovered, shall be, one half to the use of the state, and the other half to the use of him, who shall sue for the same. Appropriation of penalties. 1821, 155, § 7.

## CHAPTER 58.

### OF HOPS FOR EXPORTATION.

- SECT. 1.** Inspectors to remain in office.
- 2. Vacancies to be filled by the governor.
- 3. Oath and bond.
- 4. Deputies.
- 5. What hops deemed merchantable.
- 6. Manner of inspecting and branding.
- 7. Certificate to be produced before clearance.
- 8. Master's or owner's oath.

- SECT. 9.** Penalty for exporting. &c. contrary to law.
- 10. Seizure.
- 11. Penalty for inspector's delay.
- 12. For fraudulently marking bales or pockets.
- 13. For shifting the contents.
- 14. For frauds by inspector.
- 15. For fraudulent intermixtures.
- 16. How appropriated.
- 17. Annual returns.

**SECTION 1.** The inspectors of hops, in the several counties of the state, and their respective deputies, shall continue to hold their offices, according to the terms of their respective appointments. Inspectors to remain in office. 1836, 202, § 1.

**SECT. 2.** When a vacancy shall occur, in the office of an inspector of hops in any county, it shall be the duty of the governor, with advice of the council, to appoint a suitable person, to supply the vacancy; who shall be removable at the pleasure of the executive. Vacancies to be filled by the governor. 1836, 202, § 1.

**SECT. 3.** Before entering on the duties of his office, he shall be duly sworn, and shall give bond to the state treasurer with sufficient sureties, in the sum of five hundred dollars, for the faithful discharge of the duties of his said office. Oath and bond. 1836, 202, § 1.

**SECT. 4.** Each inspector may appoint deputy inspectors in his county, for whom he shall be answerable, and from whom he may require sufficient bonds, for the faithful discharge of their duty; and they shall be duly sworn. Deputies. 1836, 202, § 1.

**SECT. 5.** Hops shall not be deemed merchantable, unless they have been picked well, and free from stems and leaves, and dried in a kiln, with a charcoal fire: and the bales or *packets*, [pockets], in which they are packed, shall be firm and strong, and of such a texture, as to receive the marks of the cultivator and inspector; and each bale or *packet* shall be marked with the name of the cultivator, and of the town, in which he lives. What hops deemed merchantable. 1821, 152, § 7.

**SECT. 6.** The inspector, or one of his deputies, shall examine Manner of in-

**CHAP. 58.** the contents of every bale or *packet* of hops, intended to be exported, so as to ascertain the quality; and, if found to be merchantable and firmly packed, and that they were packed, at least ten days before inspection, and that the bales or *packets* are such as are before described, he shall distinguish the same by marking them with the words, *first sort*, or *second sort*, or *third sort*, or *refuse*, according to their quality. He shall also add the date of the year, and the weight of each bale or *packet*, and the initials of his own christian name, the whole of his surname, the name of the county, and the word, MAINE.

Certificate to be produced before clearance. 1821, 152, § 5.

**SECT. 7.** Hops shall not be shipped, or exported from this state, unless the master or owner of the vessel, in which such hops are shipped, shall produce to the collector, or other person authorized by the laws of the United States to clear out vessels, a certificate of the inspector, or one of his deputies, that the same have been duly inspected, marked, and weighed, according to the provisions of this chapter; which certificate shall express the number of bales or *packets*, of each sort of hops, with the weight of each bale.

Master's or owner's oath. 1821, 152, § 5.

**SECT. 8.** Any such master or owner, on producing such certificate, shall take and subscribe the following oath, viz: "I do swear, that, according to my best knowledge and belief, the certificate hereto annexed contains the whole quantity of hops, on board the \_\_\_\_\_, of which \_\_\_\_\_ is master; and that there are no hops on board the said vessel, for the use of the ship's company, on freight, or on cargo, but what have been inspected and marked, according to the law of this state. So help me God."

Penalty for exporting, &c. contrary to law. 1821, 152, § 6.

**SECT. 9.** Every person who shall export, or ship for exportation, from this state, any hops, contrary to the provisions of this chapter, shall forfeit and pay the sum of twenty dollars; and the master of every vessel, having the same on board, the sum of ten dollars; for every bale or *packet*, so shipped for exportation, or exported.

Seizure. 1821, 152, § 6.

**SECT. 10.** Any inspector may issue a warrant to the sheriff, or his deputy, or constable, to go on board a vessel, and seize any hops on board, which have not been inspected and marked, as aforesaid, and secure the same as forfeited; and the officer may require all necessary assistance; and every person thus required to assist, shall forfeit five dollars for refusal so to do; provided, that nothing in this chapter shall apply to hops, shipped and transported coastwise, within the state, for the purpose of inspection; in which case a certificate of the owner shall accompany the same, stating the owner's name, the number of bales or packages, and to whom they are sent.

Penalty for inspector's delay. 1821, 152, § 7.

**SECT. 11.** If an inspector shall unreasonably delay the inspection and marking hops, when requested, he shall forfeit five dollars.

For fraudulently marking bales or packets. 1821, 152, § 8.

**SECT. 12.** If any person, not being an inspector, nor deputy, shall alter or counterfeit any mark belonging to, or proper to be used by, any inspector or deputy, or shall mark any bale or *packet*, with any letters or marks aforesaid, he shall forfeit ten dollars for each offence; and the hops shall be forfeited.

For shifting the contents. 1821, 152, § 9.

**SECT. 13.** If any person shall empty any bale, marked as above required, and put in any other hops for sale or exportation, without cutting out or obliterating the marks, he shall forfeit and pay five dollars for each offence.

- SECT. 14.** If any inspector or deputy shall be guilty of fraud, in inspecting hops, contrary to this chapter, or put his marks on any bale or *packet*, not inspected by him, and found merchantable, he shall forfeit and pay twenty dollars for each bale or *packet*. **CHAP. 58.**  
For frauds by inspector. 1821, 152, § 10.
- SECT. 15.** If any person shall mix hops, not inspected, with those which have been inspected, contrary to this chapter, he shall forfeit and pay twenty dollars for each offence. For fraudulent intermixtures. 1821, 152, § 11.
- SECT. 16.** All said penalties, when recovered, shall be, one half to the prosecutor, and the other half to the town, where the offence was committed. How appropriate. 1821, 152, § 12.
- SECT. 17.** The several inspectors shall, annually, in the month of May, make return, to the secretary of state, of the whole number of bales or *packets*, marked by him, of the different qualities, and the weight of each quality, making up his account to May first; and the deputies of each inspector shall make seasonable returns to them. Annual returns. 1821, 152, § 13.

## CHAPTER 59.

### OF PACKING CLAMS.

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| <p><b>SECT. 1.</b> Of the appointment of inspectors; tenure of office. Bond.</p> <p>1 How clams shall be packed and marked.</p> <p>2 Forfeiture for exporting or selling damaged clams.</p> | <p><b>SECT. 4.</b> Seizure of clams, fraudulently shipped.</p> <p>5. Forfeiture for inspector's misconduct.</p> <p>6. Penalties, how appropriated.</p> |
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**SECTION 1.** All inspectors of clams in this state, who have been appointed by the governor and council, as such, shall continue in office according to the tenure thereof; and when in any city or town, where clams are packed for exportation, a vacancy shall happen, another person skilled in the quality of the same, shall be appointed, by the governor and council, to fill the vacancy during their pleasure; and he shall give bond to the treasurer of the city or town, where he resides, in the sum of two hundred dollars, for the faithful discharge of his duty. Of the appointment of inspectors; tenure of office. 1839, 379, § 1.  
  
Bond.

**SECT. 2.** All clams, packed for exportation, shall be shelled and well struck with salt, before freezing, and preserved from taint and damage, and shall be packed in barrels or half barrels; each barrel to contain two hundred pounds of clams, and thirty pounds of salt; and each half barrel shall contain one hundred pounds of clams, and fifteen pounds of salt; and such casks shall be branded by the inspector, as follows, viz: Those of the best quality and No. 1; those, which remain and are free from damage, shall be No. 2. He shall brand on the head of each cask, which clams are packed or repacked, the number of pounds in each cask, the initials of his christian name, and his surname at length, the name of the city or town, for which he is appointed, and the word, MAINE. How clams shall be packed and marked. 1839, 379, § 2.

**CHAP. 59.**  
 Forfeiture for exporting or selling damaged clams. 1839, 379, § 2.  
 Seizure of clams, fraudulently shipped. 1839, 379, § 3.

**SECT. 3.** If any person shall sell or export, within or from this state, any tainted or damaged clams, he shall forfeit and pay for each barrel, so sold, five dollars, and for each half barrel, two dollars and fifty cents.

**SECT. 4.** If shelled clams, packed in barrels or half barrels, shall be put on board any vessel or carriage, with intent to sell or export the same, unless they have been inspected and branded, according to the provisions of this chapter, such clams may be seized, by virtue of a warrant issued by a justice of the peace to any proper officer, on complaint made to him by any person; and the officer shall carry the same to the inspector nearest to the place of seizure, who shall be authorized to open, inspect, repack and brand, as aforesaid, and detain the same till all expenses of seizure, inspection and other charges shall be paid.

Forfeiture for inspector's misconduct. 1839, 379, § 4.

**SECT. 5.** If any inspector shall brand any cask, the contents of which he has not inspected, packed, salted and coopered, according to the provisions of this chapter, or shall permit any other person to use his brand, contrary to the provisions of this chapter, he shall forfeit and pay, for each cask so branded, five dollars.

Penalties, how appropriated. 1839, 379, § 5.

**SECT. 6.** All the foregoing penalties, when recovered, shall be to the use of the town, where the offence was committed, and to the person who shall sue for the same, in equal proportions.

**CHAPTER 60.**

OF FIRE WOOD, BARK AND COAL.

- SECT. 1.** Dimensions of a cord of wood.  
 2. Penalty for selling before survey.  
 3. How wood shall be corded, when brought by water.  
 4. Penalty for removing from wharf, &c. before measured.  
 5. Ticket of the admeasurement and name of driver, to be exhibited on demand of any sworn measurer.  
 6. Not applicable to a person transporting fire wood, purchased for himself.

- SECT. 7.** Forfeiture for fraudulent stowage.  
 8. How charcoal may be sold and measured.  
 9. Size of coal baskets. To be sealed.  
 10. Penalty for using other baskets.  
 11. Seizure of such baskets.  
 12. Measurer to give a ticket, under penalty.  
 13. Penalties, how appropriated.  
 14. How recovered.

Dimensions of a cord of wood. 1821, 160, § 1. 14 Maine, 404.

**SECTION 1.** All cord wood, exposed to sale, shall be four feet long, including half the scarf; and, being well and closely laid together, a cord of wood or bark shall measure eight feet in length, four feet in width, and four feet in height.

Penalty for selling before survey. 1821, 160, § 3.

**SECT. 2.** If any fire wood or bark, brought into any town by land, shall be sold and delivered, before it has been measured by a sworn measurer, unless otherwise agreed to by the purchaser, and a ticket signed by him and given to the driver, stating the quantity the load contains, the name of the driver, and the town in which he resides, such wood or bark shall be forfeited, and may be libeled and disposed of according to law.

**SECT. 3.** All cord wood, brought by water into any town for sale, shall be corded on the wharf or land, on which it shall be landed, in ranges, making up in height, what shall be wanting in length; at which time it shall be so measured, and a ticket given to the purchaser, who shall pay the stated fees.

**SECT. 4.** If any wharfinger, or carter, shall carry away any fire wood from a wharf, or landing place, before the same shall have been so measured, he shall forfeit and pay one dollar for every load, so carried away.

**SECT. 5.** Every wharfinger, carter or driver, who shall carry any fire wood from a wharf or landing, shall be furnished by the owner, or seller of it, with a ticket, stating the quantity, and name of the driver; and if any firewood shall be carried away without such ticket, or if any driver shall refuse to produce and show such ticket, on demand, to any sworn measurer, or give his consent to have the same measured, if the ticket shall certify a greater quantity of wood than the load contains, in the opinion of the measurer, such wood shall be forfeited and seized, and may be libeled by said measurer, and disposed of in the manner the law directs.

**SECT. 6.** Nothing in the preceding section shall be construed to extend to any person, transporting or causing to be transported, from any wharf or landing to his dwelling or other building, any cord wood, which he may have purchased on such wharf or landing, or have landed thereon, upon his own account.

**SECT. 7.** When any wood, bark or charcoal, may be sold by the cord, foot or load, which may be stowed or loaded in such a manner as to prevent the surveyors from examining the middle of the load, and it shall appear on delivery, that the wood, bark or coal, has been stowed, with a fraudulent intent of obtaining payment for a greater quantity, than there was, in fact, in said load, the person so selling such load or quantity of either of said kinds, or the owner thereof, shall pay a fine of ten dollars for the use of the county, with costs of prosecution.

**SECT. 8.** Any charcoal, brought into any town for sale, may be measured and sold by the cord or foot, estimating the cord at ninety six bushels, whenever the purchaser and seller may agree to the same; and the measurers before named shall be measurers of charcoal also.

**SECT. 9.** All baskets for measuring charcoal, brought into any town for sale, shall be sealed by the sealer of the town, where the person using the same usually resides, and shall contain two bushels, and be of the following dimensions, viz: nineteen inches in breadth, in every part thereof, and seventeen inches and a half deep, measuring from the top of the basket to the highest part of the bottom: and in measuring charcoal for sale, the basket shall be well heaped.

**SECT. 10.** Every person, who shall measure charcoal, for sale, in any basket of less dimensions, or not sealed, shall forfeit and pay for each offence, five dollars.

**SECT. 11.** The selectmen and assessors, before named, may appoint some suitable person, to seize and secure all the baskets used for measuring coal, not according to the provisions of this chapter.

**CHAP. 60.**

How wood shall be corded, when brought by water. 1821, 160, § 4.

Penalty for removing from wharf, &c. before measured. 1821, 160, § 5.

Ticket of the admeasurement and name of driver, to be exhibited on demand of any sworn measurer. 1821, 160, § 6.

Not applicable to a person transporting firewood, purchased for himself. 1821, 160, § 6.

Forfeiture for fraudulent stowage. 1825, 293, § 1.

How charcoal may be sold and measured. 1825, 293, § 2.

Size of coal baskets. To be sealed. 1821, 160, § 7.

Penalty for using other baskets. 1821, 160, § 7.

Seizure of such baskets. 1821, 160, § 8.

CHAP. 60.

Measurer to give a ticket, under penalty. 1836, 239.

Penalties, how appropriated. 1821, 160, § 3, 5, 6.

How recovered. 1821, 160, § 9.

SECT. 12. If any measurer of wood, bark or charcoal, shall neglect or refuse to give a certificate of the contents of any load, to the owner or purchaser, he shall forfeit and pay for each offence five dollars.

SECT. 13. The penalties mentioned in this chapter shall accrue, one half to the town where the offence was committed, and one half to the prosecutor.

SECT. 14. Any pecuniary forfeiture mentioned in this chapter, may be recovered by action, or by complaint or indictment.

CHAPTER 61.

OF FISHERIES.

- SECT. 1. Persons from without the state, not to take fish with nets, &c.
- 2. No nets to be placed, crosswise of any river, &c.
- 3. Forfeitures therefor.
- 4, 5, 6. Penalty for destroying shell fish, unless under certain circumstances.
- 7. Of lobsters.
- 8. Vessels liable to seizure for breach of certain provisions.
- 9. Local and special laws, not affected by this chapter.
- 10. Jurisdiction of the county commissioners relative to fishways.

- SECT. 11. If owners neglect to open such ways, the commissioners to do so, at expense of owners.
- 12. Remedy by the county to recover such expense.
- 13. Commissioners to define limits in writing, and enter on the town records.
- 14. Penalty for taking certain fish within such limits, from May 1, to July 15.
- 15. All weirs to be stripped by the 15th July. Penalty for neglect.
- 16. Appeal from decision of the commissioners
- 17. Joint jurisdiction of commissioners in Hancock and Penobscot.

Persons from without the state, not to take fish with nets, &c. 1821, 178, § 6.

No nets to be placed crosswise of any river, &c. 1821, 178, § 4. 4 Pick. 165.

Forfeitures therefor. 1821, 178, § 8. 1823, 241, § 2.

Penalty for destroying shell fish, unless under certain circumstances. 1821, 197, § 2, 3.

SECTION 1. No person, living without this state, shall set or place any net, weir, seine or other machine in any of the rivers, streams, creeks, harbors, inlets or coves, in this state, for the purpose of taking salmon, shad, herrings or alewives.

SECT. 2. No person shall set or place any net crosswise of any river, stream, creek, harbor, inlet or cove, for the purpose of taking any of the said fish; but all such nets shall be set lengthwise of such waters.

SECT. 3. Whoever shall violate the provisions of either of the preceding sections, shall forfeit for each offence, a fine not exceeding fifty dollars, to the use of any person, who may sue therefor; and every net or other machine, set or placed, as prohibited in the said sections, shall also be forfeited to whomsoever may prosecute for the same, as forfeited goods, as provided in the one hundred and thirty second chapter.

SECT. 4. If any person shall take, or otherwise wilfully destroy, any oysters or other shell fish, or obstruct their growth in their beds, in any of the waters of this state, except as provided in the two following sections, he shall forfeit to the person suing therefor, not less than one dollar, nor more than two dollars, for each bushel thereof including the shells so taken or destroyed.

**SECT. 5.** The selectmen of the town, or assessors of the plantation, wherein such oysters or other shell fish may be found, may, in writing, authorize any persons to take the same, at such times, in such quantities, and for such uses, as they shall think proper, and shall express in their permits; and any inhabitant of such town or plantation, or native indian within this state, may take the same without any permit, for the consumption of himself or family; provided, that no person, without such permit, shall be allowed to take oysters, for any purpose, in the month of June, July or August.

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Same subject.  
1821, 179, § 2, 3.

**SECT. 6.** Any fisherman may, without such permit, take any shell fish, suitable for bait, necessary for his use, and in a quantity, not exceeding seven bushels, including the shells, at any one time.

Same subject.  
1821, 179, § 3.

**SECT. 7.** If any person, not living within the state, shall take or destroy any lobsters in any waters within the state, without a permit from the selectmen of the town, or assessors of the plantation, where the same may be, he shall forfeit not less than ten, nor more than fifty dollars, for each offence; one half to the use of such town, and the other half to the use of the person suing therefor.

Of lobsters.  
1828, 383, § 1, 2.

**SECT. 8.** If any vessel, boat or craft shall be found within the limits of any town or plantation, not owned therein, with any lobsters, oysters or other shell fish on board, taken in such town, against the provisions in this chapter, any inhabitant of such town may seize and detain such vessel, boat or craft, for a time not exceeding forty eight hours, in order that the same may be attached or arrested by due process of law, and secure the fines and forfeitures before mentioned, with costs; to which process such vessel, boat or craft is hereby declared to be liable, without further proof of the property in the parties liable to such fines; provided that if, before any such attachment, the owner or master of such vessel, boat or craft, shall pay the expense of such detention, and also pay to the treasurer of such town, and for the use thereof, the amount of fines incurred, it shall be released with the effects therein.

Vessels liable to seizure for breach of certain provisions.  
1821, 179, § 4.

**SECT. 9.** Nothing contained in this chapter shall be construed, as affecting the operation of any laws, of local application, now in force in any of the waters or places specially named or described in such laws, whether heretofore published as public, or as private and special, laws.

Local and special laws, not affected by this chapter.

**SECT. 10.** The county commissioners in their respective counties shall, from time to time, examine all dams and obstructions in rivers and streams, emptying into rivers, in which salmon, shad and alewives abound; and after notice, in writing, to one or more of the parties interested, and a hearing thereon, shall decide what would be a suitable fishway in such dam or obstruction; but such fishway shall not exceed one foot in fifteen of the width of the river or stream at that place: provided, that no such examination shall be made, except upon the written application of three or more responsible individuals, who shall be held to pay all the expenses of such examination, to said commissioners, if they shall decide that no alteration of said dam, or other obstruction, is demanded by the public good.

Jurisdiction of the county commissioners relative to fishways.  
1840, 16, § 1.  
3 Fairf. 222.  
16 Maine, 9,  
303.

**SECT. 11.** After a decision, that such fishway shall be made, and twenty days notice thereof, published in a newspaper printed

If owner neglect to open such ways, the



**CHAP. 61.** in the county, if any, otherwise in the newspaper published by the printer to the state, requiring the owner of any such dam, or other obstruction, to build such fishway, and keep the same open, and a neglect of such owner for said twenty days to build the same, the county commissioners shall build such fishway, and notify the owner thereof, and of the expense of building the same.

commissioners to do so, at expense of owners.  
1840, 16, § 1.

Remedy by the county to recover such expense.  
1840, 16, § 1.

**SECT. 12.** If said owner shall neglect to pay said expense to the treasurer of the county, for thirty days after said notice, the treasurer shall pay the same; and the county attorney shall recover the same in an action on the case against said owner, in the name of the county, together with costs, and twelve per cent. interest on the amount, so paid. And the county shall have a lien on the mills and other property situated on said dam, or other obstruction, whether belonging to said owner, or not, commencing from the time when said fishway is opened.

Commissioners to define limits in writing, and enter on the town records.  
1840, 16, § 2.

Penalty for taking certain fish within such limits, from May 1, to July 15.  
1840, 16, § 2.

**SECT. 13.** The county commissioners shall define, in writing, the extent and limits of any such fishway, and cause the same to be entered on the records of the town, where it is situated.

All weirs to be stripped by the 15th July.  
Penalty for neglect.  
1840, 16, § 2.

**SECT. 14.** If any person shall take any salmon, shad or alewives in any such fishway, or within twenty feet on each side thereof, extending and keeping the same width fifty feet above, or below, such dam or other obstruction, or shall, by placing impediments in, or near, such fishway, hinder the passage of said fish through the same, between the first day of May and the fifteenth day of July, in any year, he shall forfeit not less than five, nor more than ten dollars, for each offence.

Appeal from decision of the commissioners.  
1840, 16, § 1.

**SECT. 15.** All weirs shall be stripped, so as to admit a free passage of fish through the same, by the fifteenth day of July, in each year. And the owner of any such weir, who shall neglect so to strip the same, shall forfeit not less than five, nor more than ten dollars for every day, until the same is stripped as aforesaid. The penalties named in this, and the preceding sections, shall be recovered in an action of debt, in the name, and to the use, of the county.

Joint jurisdiction of commissioners in Hancock and Penobscot.

**SECT. 16.** Any person, aggrieved by the decision of the commissioners, in the cases herein before specified, may appeal to the supreme judicial court, which may reverse, modify or confirm such decision. The party appealing shall recognize, as in other cases of appeal; and if he does not prosecute the same, the decision of the commissioners shall be final and in full force.

**SECT. 17.** The county commissioners of Hancock and Penobscot shall have joint jurisdiction of the rivers and streams, within the limits of their respective counties; and in case said commissioners are equally divided in opinion, they shall certify that fact to the supreme judicial court, at the next term thereof, holden in the county where the dam or other obstruction complained of is situated; and the decision of said court thereon shall be final.

## CHAPTER 62.

CHAP. 62.

## OF PROOF OF FIRE ARMS.

- SECT. 1. Provers, to remain in office.  
 2. New appointments may be made.  
 3. Duty of provers. Their certificate.
- SECT. 4. Penalty for selling, &c. a new barrel, before proved.  
 5. For altering marks.

SECTION 1. The provers of fire arms, now in office, shall continue therein, according to the tenure of their appointment.

Provers, to remain in office. 1821, 162, § 1.  
 New appointments may be made. 1821, 162, § 1.

SECT. 2. The governor, with advice of the council, may, from time to time, appoint suitable persons to be provers of the barrels of all new, or unused, fire arms, to supply any vacancy or otherwise, as he shall judge necessary.

SECT. 3. It shall be the duty of each prover of fire arms, to prove and try the strength of the barrels of all fire arms, which shall be offered to him for that purpose, in such manner as to satisfy him of the strength of the same; and he shall, in a permanent manner, mark and number every barrel, by him so proved, and deliver to the person applying to have the same proved, a certificate for each barrel proved and found good, in the following form: "I certify that on this \_\_\_\_\_ day of \_\_\_\_\_, in the year 18—, I proved for \_\_\_\_\_ a musket," (pistol or rifle) "barrel," (as the case may be), "which is numbered and marked, as in the margin, and that the same is good and strong.

Duty of provers. 1821, 162, § 1.

Their certificate.

A. B., prover of fire arms."

SECT. 4. If any person shall sell, or offer for sale, any new or unused musket, rifle or pistol barrel, without having the same first proved, marked and certified, in the manner mentioned in the preceding section, he shall forfeit and pay for each barrel, so sold or offered for sale, the sum of ten dollars, to the use of him, who shall sue for the same, or by indictment, for the use of the state.

Penalty for selling, &c. a new barrel, before proved. 1821, 162, § 3.

SECT. 5. If any person shall falsely alter the stamp or mark, or any certificate of a prover of fire arms, he shall forfeit and pay a fine, not exceeding one hundred dollars, nor less than twenty dollars, for the use of the state; to be recovered by action or indictment.

For altering marks. 1821, 162, § 4.

## CHAPTER 63.

## OF PACKING AND SELLING PAPER.

- SECT. 1, 2. Mode of packing and marking paper.  
 3. Penalty.
- SECT. 4. How appropriated.  
 5. Seizure.

SECTION 1. All paper, except paper of foreign manufacture, press paper, bonnet paper, and such paper, as is usually sold by weight, which shall be made, or offered for sale in this state, shall be packed in parcels of half reams, one ream and two reams; each half ream to contain ten quires, each ream, twenty quires, and each quire, twenty four sheets.

Mode of packing and marking paper. 1821, 163, § 1.

**CHAP. 63.**     **SECT. 2.** On the wrapper of each parcel shall be legibly printed, or stamped, the name of the manufacturer, and his place of residence; also the quantity and quality of paper, contained in the same.

**SECT. 3.** If any person shall make, or sell, or offer for sale, any paper, not packed and printed or stamped, as aforesaid, or shall transport any out of the state, or place the same on board any vessel or carriage, with intent so to transport it, he shall forfeit and pay, for each offence, the sum of four dollars for each ream or parcel.

**SECT. 4.** The said penalties, when recovered, shall be, one half to the county where the offence is committed, and the other half to the prosecutor.

**SECT. 5.** All such paper, not so packed and printed, or stamped, shall, at all times, be liable to be seized to the use of any person, who may seize the same, and cause it to be libeled as the law directs, within seven days after seizure.

Same subject.  
1821, 163, § 1.

Penalty.  
1821, 163, § 2.

How appropriated.  
1821, 163, § 3.

Seizure.  
1821, 163, § 2.

**CHAPTER 64.**

**OF FRAUD IN PRESSING HAY.**

<p><b>SECT. 1.</b> Pressed hay, how marked for sale.</p> <p><b>2.</b> Forfeited, unless so marked, if for sale or shipping.</p> <p><b>3.</b> Penalty, for receiving on board a vessel.</p>	<p><b>SECT. 4.</b> How bales may be secured with boards.</p> <p><b>5.</b> No sworn weigher to buy, except for his own use.</p>
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Pressed hay, how marked for sale.  
1838, 320, § 1.

Forfeited, unless so marked, if for sale or shipping.  
1838, 320, § 2.

Penalty, for receiving on board a vessel.  
1838, 320, § 3.

How bales may be secured with boards.  
1838, 320, § 4.

No sworn weigher to buy, except for his own use.  
1837, 270.

**SECTION 1.** All hay, pressed and put up in bundles, for sale, in this state, shall be branded on the bands or boards enclosing the same, with the first letter of the christian name, and the whole of the surname, of the person packing, screwing or otherwise pressing the hay; and also with the name of the place, where the hay was pressed, or where the person, packing or screwing the hay, shall live, with the name of the state.

**SECT. 2.** All screwed hay, offered for sale or shipping, unless branded in the manner mentioned in the preceding section, shall be forfeited; one half to the use of the town, where offered for sale or shipping, and the other half to him, who shall libel and prosecute for the same, as the law directs.

**SECT. 3.** If the master of any vessel shall take, on board a vessel, pressed hay, not branded as before prescribed, he shall forfeit and pay two dollars for each bundle, so received, to be recovered to the uses before mentioned.

**SECT. 4.** Every bale of screwed or pressed hay may have four pieces of seasoned board, not more than four inches wide, or one inch thick, to keep the hay in place; on one of which, or on one of the bands, shall be marked the weight of the bale.

**SECT. 5.** No sworn weigher of hay shall purchase any hay, but what is necessary for his own use and consumption.

## CHAPTER 65.

CHAP. 65.

## OF SOLE LEATHER, BOOTS AND SHOES.

SECT. 1. Manufacturer of leather, or boots, &c. may stamp his name. Warranty.

2. Penalty, for fraudulently stamping.

SECT. 3. Inspectors of sole leather.

4, 5. Duty of such inspectors.

6. Mode of marking. Penalty, for counterfeiting marks.

SECTION 1. Each manufacturer of leather, or of boots, half boots, shoes, pumps, sandals, slippers or galo shoes, shall have the exclusive right of stamping said articles, by him made, with the initial letter of his christian name, and his surname at large, and such stamping shall be considered, as a warrant, that the article stamped is merchantable, and well made of good materials.

SECT. 2. If any person shall fraudulently stamp either of said articles, with the name or stamp of any other person, he shall be punished, as guilty of a fraud, on indictment, and fined not exceeding twenty dollars; or by imprisonment, not exceeding six months; or by both said punishments.

SECT. 3. The selectmen in each town, and the assessors of each organized plantation, whenever they shall deem it expedient, shall appoint one or more suitable persons, inspectors of sole leather, who shall be duly sworn; and shall receive such fees, for their services, as such selectmen or assessors shall deem proper, to be paid by the person requesting the inspection: and, when paid by the owner thereof, it shall be a legal charge, to be paid by the purchaser to the vender.

SECT. 4. Every such inspector, when requested, shall go to any place in the town or plantation, for which he is appointed, to examine and inspect any sides of sole leather, which had not been previously inspected by an inspector in some other town, or in the same town.

SECT. 5. He shall furnish himself with a proper apparatus, with which he shall weigh, or stamp, every side of sole leather, he shall have inspected, with his surname and the name of the town or plantation, for which he is inspector, and also the weight thereof.

SECT. 6. On all sole leather made of good hides, and in the best manner, the word, *best*, shall be stamped; on all sole leather made of good hides, in a merchantable manner, the word, *good*; and on all other, the words, *second*, or *third*, quality, *damaged* or *bad*, according to the quality thereof; and if any person, shall counterfeit such mark, or alter or deface the same, on any leather, he shall forfeit and pay twenty dollars for every such offence; one half to the use of the town, where the offence was committed, and the other half to the use of him, who shall prosecute therefor.

Manufacturer of leather, or boots, &c. may stamp his name. Warranty. 1821, 161, § 2.

Penalty, for fraudulently stamping. 1821, 161, § 3.

Inspectors of sole leather. 1829, 428, § 1.

Duty of such inspectors. 1829, 428, § 2.

Same subject. 1829, 428, § 2.

Mode of marking. 1829, 428, § 2.

Penalty, for counterfeiting marks.

## CHAPTER 66.

## OF THE SURVEY AND INSPECTION OF SHINGLES, CLAPBOARDS, HOOPS AND STAVES, BOARDS AND OTHER LUMBER, AND THE ADMEASUREMENT OF LOGS.

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| <p>SECT. 1. Towns to elect surveyors of boards, &amp;c.</p> <p>2. Boards, plank, timber and slit work to be surveyed, before being sold and delivered.</p> <p>3. What description of pine boards may be exported beyond the U. States.</p> <p>4. Allowance for drying and shrinking.</p> <p>5. Towns to elect surveyors of shingles, clapboards, staves and hoops.</p> <p>6. Dimensions and quality of No. 1 shingles.</p> <p>7. Nos. 2 and 3.</p> <p>8. How shingles shall be split or sawed, and packed.</p> <p>9. To be surveyed, measured and branded under forfeiture.</p> <p>10. Forfeiture of deficient bundles, packed as No. 1.</p> <p>11. Dimensions and quality of clapboards.</p> <p>12. Also of staves.</p> <p>13. Staves, how enumerated.</p> <p>14. Dimensions and quality of hog-head hoops.</p> | <p>SECT. 15. How packed and enumerated.</p> <p>16. Forfeiture of deficient bundles.</p> <p>17. Boards, &amp;c. to be surveyed before delivery on sale, or being shipped.</p> <p>18. Viewers and cullers of staves and hoops.</p> <p>19. Of the survey of staves and hoops.</p> <p>20. Forfeiture on sale, or shipment of lumber not surveyed.</p> <p>21. Surveyor's certificate to be produced before clearance. Master's or owner's affidavit.</p> <p>22. Forfeiture for neglect.</p> <p>23. For second offence, vessel also forfeited.</p> <p>24. Provision in case surveyor, &amp;c. on election, refuse the oath of office.</p> <p>25. Penalty for neglect of official duties.</p> <p>26. For fraud or coannivance.</p> <p>27. Recovery of penalties and forfeitures.</p> <p>28. Of surveyors and measurers of logs.</p> <p>29. Their duties.</p> |
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Towns to elect surveyors of boards, &c. 1821, 158, § 1.

SECTION 1. Every town and plantation, at its annual meeting, shall elect one or more suitable persons, to be surveyors and measurers of boards, plank, timber and slit work, who shall be duly sworn.

Boards, plank, timber and slit work to be surveyed, before being sold and delivered. 1821, 158, § 1.

SECT. 2. All boards, plank, timber and slit work, offered for sale, shall, previously to delivery, be surveyed by one of the said surveyors, and, if he have any doubt of its dimensions, measured by him, he having due consideration for the drying and shrinking thereof; and such surveyor shall mark, on all such, their just contents, making reasonable allowance for rots, knots and splits.

What description of pine boards may be exported beyond the United States. 1821, 158, § 2.

SECT. 3. No pine boards, except sheathing boards, shall be shipped for exportation beyond the United States, but such as are square edged, and not less than seven eighths of an inch in thickness, and not less than ten feet in length, on pain of being forfeited to the use of the town where shipped.

Allowance for drying and shrinking. 1821, 158, § 2.

SECT. 4. In the surveys mentioned in the two preceding sections, a proper allowance shall be made for drying and shrinking of pine boards, and such as shall be three fourths of an inch in thickness, when fully seasoned, and in the same proportion, when partly seasoned, shall be considered merchantable.

Towns to elect surveyors of shingles, clapboards, staves and hoops. 1821, 158, § 1.

SECT. 5. Every town and plantation, at its annual meeting, shall also elect one or more persons, to be surveyors of shingles, clapboards, staves and hoops, who shall be duly sworn.

SECT. 6. All shingles, packed for exportation beyond the state,

shall be sixteen inches long, and free from shakes and worm holes, and at least three eighths of an inch thick at the but end, when green, and if of pine, free from sap. They shall be four inches wide on an average, and not less than three inches wide in any part, and shall hold their width, three fourths of the way to the thin end, and be well shaved or sawed. Such shall be denominated, *No. 1.*

**SECT. 7.** Shingles, intended for sale in any place within this state, if of inferior quality or of less dimensions, than those described in the preceding section, may be surveyed and classed accordingly, under the denominations of, *No. 2,* and, *No. 3.*

**SECT. 8.** All shingles shall be split or sawed crosswise the grain, and each bundle shall contain two hundred and fifty shingles; and, if bound in square bundles, shall contain twenty five courses, and measure twenty two inches and a half at the lay.

**SECT. 9.** All shingles, before they are offered for sale, shall be surveyed and measured, by a sworn surveyor of any town in the county, where made, and the quality designated upon the hoop or band of the bundle; and all shingles thus offered for sale, before being surveyed, measured or branded as aforesaid, unless the parties shall otherwise agree, shall be forfeited to the use of the town, where the offence shall be committed.

**SECT. 10.** In all cases of shingles, packed to be surveyed as *No. 1,* and for the purpose of exportation, if, in any one bundle, there shall be found as many as five shingles deficient in the proper dimensions, soundness, or number, to make up two hundred and fifty merchantable shingles, the whole bundle shall be forfeited to the use of the town, where exhibited.

**SECT. 11.** All clapboards, exposed to sale, or packed for exportation, shall be made of good, sound timber, free from shakes and worm holes, and if of pine, clear of sap; and they shall be at least five eighths of an inch thick, on the back or thickest part, five inches wide, and four feet, six inches long, and straight and well shaved or sawed.

**SECT. 12.** Staves, packed for sale or exportation, shall be well and proportionably split and of the following dimensions, viz:

White oak butt staves, at least five feet in length, five inches wide, and one inch and a quarter thick on the heart or thinnest edge, and every part thereof;

White oak pipe staves, shall be at least four feet and eight inches in length, four inches broad, in the narrowest part, and not less than three quarters of an inch thick, on the heart or thinnest edge;

White or red oak hogshead staves shall be at least forty two inches long, and not less than half an inch thick, on the least or thinnest edge;

White or red oak barrel staves, for a market out of the United States, shall be thirty two inches long; if for use, within the United States, thirty inches long; and in either case, half an inch thick on the heart or thinnest edge;

All white or red oak hogshead or barrel staves shall be, at least, one with another, four inches in breadth, and no one less than three inches in breadth in the narrowest part; and those of the breadth last mentioned shall be clear of sap.

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Dimensions and quality of *No. 1* shingles. 1821, 158, § 3. 1824, 250, § 1.

*Nos. 2 and 3.* 1824, 250, § 1.

How shingles shall be split or sawed, and packed. 1821, 158, § 3.

To be surveyed, measured and branded, under forfeiture. 1821, 158, § 3.

Forfeiture of deficient bundles, packed as *No. 1.* 1821, 158, § 3.

Dimensions and quality of clapboards. 1821, 158, § 3.

Also of staves. 1821, 158, § 3.

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Staves, how enumerated.  
1828, 404, § 2.  
Dimensions and quality of hogshead hoops.  
1821, 158, § 3.

How packed and enumerated.  
1821, 158, § 3.  
1828, 404, § 2.

Forfeiture of deficient bundles.  
1821, 158, § 3.

Boards, &c. to be surveyed before delivery on sale, or being shipped.  
1821, 158, § 1, 4.

Viewers and cullers of staves and hoops.  
1821, 158, § 1.

Of the survey of staves and hoops.  
1821, 158, § 4.

Forfeiture on sale or shipment of lumber not surveyed.  
1821, 158, § 4, 6.

Surveyor's certificate to be produced before clearance. Master's or owner's affidavit.  
1821, 158, § 5.

Forfeiture for neglect.  
1821, 158, § 7.  
1824, 250, § 2.

SECT. 13. Two staves shall be sold, as one cast; fifty casts, one hundred staves; and ten hundred, one thousand.

SECT. 14. All hogshead hoops, exposed for sale, or packed for exportation, shall be from ten to thirteen feet in length, and of white oak or walnut, and of good and sufficient substance, well shaved; if of oak, at least one inch broad, and, if of walnut, three quarters of an inch at the least end.

SECT. 15. All hoops of ten, twelve and thirteen feet, respectively, shall be made up in distinct bundles by themselves; each bundle shall consist of twenty five hoops, four bundles making one hundred, and ten hundred, one thousand.

SECT. 16. Every bundle of hoops, packed for sale or exportation, found to be deficient in the number, or dimensions, of its contents, shall be forfeited to the use of the town, where exhibited.

SECT. 17. No boards, clapboards, nor shingles, shall be delivered on sale, nor shipped for exportation, until duly surveyed by one of the proper surveyors aforesaid, in the town or plantation, where sold or shipped, nor until such surveyors shall have given a certificate of the number, quality and quantity thereof.

SECT. 18. In every town, being a port of delivery, and where staves and hoops are usually exported, there shall be annually chosen, in addition to the officers before named, two or more suitable persons, to be viewers and cullers of staves and hoops, who shall be duly sworn.

SECT. 19. All staves and hoops, before being shipped to any place beyond the United States, shall be first viewed, culled and surveyed, by one of the officers mentioned in the preceding section, and a proper certificate thereof given by him to the master of the vessel, in which the same may be shipped; and the bundles shall be stamped, with the brand of the town whence exported.

SECT. 20. Any person, selling and delivering any boards, plank, timber or slit work, or any clapboards, shingles, staves or hoops, or shipping off or attempting to ship off, any of such articles, before they are surveyed, measured, viewed or culled, as the case may require, shall forfeit two dollars, a thousand, to be reckoned by quantity or tale, as such articles may be usually sold; one half to the town, where the offence shall have been committed, and the other half to the prosecutor.

SECT. 21. The master or owner of any vessel, having any of the lumber or other articles, mentioned in the preceding section, on board for exportation as aforesaid, shall, before the vessel shall be cleared at the custom house, produce to the collector a certificate from the proper officer, that the same have been duly surveyed, measured, viewed or culled, as the case may require; and such master or owner shall, likewise, make oath before the collector, or any justice of the peace, whose certificate shall be returned to the collector, that the articles, so shipped for exportation, are the same articles thus surveyed, measured, viewed or culled, that he has no others on board of the like description, and that he shall not take any others.

SECT. 22. In addition to the penalty, mentioned in the twentieth section, whenever it shall appear, that any of the articles enu-

merated, in said section shall have been exported beyond the limits of the United States, contrary to the provisions of this chapter, in any vessel, the master or owner of such vessel shall, for the first offence, forfeit two hundred dollars, to the use of the town or plantation, whence the same were exported.

**SECT. 23.** If, after conviction and the recovery of the penalty, mentioned in the preceding section, such master or owner shall be guilty again of exporting any such articles in the same vessel, contrary to the provisions of this chapter, the like penalty shall be again incurred, and the vessel, if found in this state, shall be forfeited to the use of the town or plantation, where such subsequent offence may have been committed.

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For second offence, vessel also forfeited.  
1821, 158, § 7.  
1824, 250, § 2.

**SECT. 24.** If any person, duly elected a surveyor, measurer, viewer or culler of any of said articles under the provisions of this chapter, shall neglect or refuse to take the oath of his office, and to serve therein, he shall forfeit three dollars to the use of the town, and another person shall be elected to his place, whose duty it shall be to take the oath and serve, as aforesaid, under the like penalty; and the like proceedings may be had, until the office shall be filled.

Provision, in case surveyor, &c. on election, refuse the oath of office.  
1821, 158, § 9.

**SECT. 25.** If any such officer, duly qualified, shall unnecessarily refuse or neglect to attend to the duties of his office, when requested, he shall forfeit three dollars, for each offence, to the use of the town, by which he was appointed.

Penalty for neglect of official duties.  
1821, 158, § 10.

**SECT. 26.** If he shall connive at, or willingly allow, any breach of the provisions of this chapter, in another person, or if he shall be guilty of any other fraud or deceit in the exercise of his office, he shall forfeit thirty dollars, to the use of such town.

For fraud or connivance.  
1821, 158, § 10.

**SECT. 27.** All pecuniary penalties mentioned in this chapter may be recovered by indictment, or by complaint of any inhabitant of the town, interested therein, or by an action of debt, brought by the treasurer of such town; and all other forfeitures shall be prosecuted for, and recovered, by a libel filed by any inhabitant of such town, or the treasurer thereof, under the provisions of chapter, one hundred and thirty two.

Recovery of penalties and forfeitures.

**SECT. 28.** The selectmen of any town, or the assessors of any plantation, may, if they deem it necessary, annually appoint any number of suitable persons, not exceeding seven, to be surveyors and measurers of logs, who shall be sworn.

Of surveyors and measurers of logs.  
1829, 447, § 1.

**SECT. 29.** Any such surveyor and measurer may inspect and survey, and measure all mill logs floated or brought to market, or offered for sale, in their respective towns or plantations, and divide them into several classes or denominations, corresponding to the different quality of boards and other sawed lumber, which may be manufactured from them; and they shall give certificates under their hands, of the quantity and quality thereof, to the person, at whose request the same shall be so measured and surveyed.

Their duties.  
1829, 447, § 1.



## CHAP. 67.

## CHAPTER 67.

## OF TIMBER UPON RIVERS AND STREAMS, AND ON ADJACENT LANDS.

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| <p>SECT. 1. Penal forfeitures, for the unlawful conversion of logs, masts or spars.</p> <p>2. Such unlawful conversion declared to be larceny.</p> <p>3. Penalties for cutting out, altering, or destroying marks.</p> <p>4. Double damages also recoverable, by the owner.</p> <p>5. What shall be presumptive evidence of guilt.</p> <p>6. Right of owner to search on the mill, boom or raft of another person. Penalty for obstructing.</p> <p>7. Logs in any boom, on Saco river, to be released on request.</p> | <p>SECT. 8. Penalty, for neglect or refusal.</p> <p>9. When logs of different owners are intermixed, how they may be driven. Lien for the expenses.</p> <p>10. Forfeiture of timber, lodged upon banks. Previous notice required.</p> <p>11. Owner may remove the same at any time, on tender of the damages and expenses.</p> <p>12. Right of action, when such timber has been removed.</p> <p>13. Construction of this chapter, in reference to certain local laws.</p> |
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Penal forfeitures, for the unlawful conversion of logs, masts or spars. 1831, 521, § 1. 1839, 370. 2 Greenl. 130. 3 Greenl. 202. 16 Maine, 67.

SECTION 1. If any person shall take, carry away, or otherwise convert to his own use, without the consent of the owner, any log, suitable to be sawed or cut into boards, clapboards, shingles, joists or other lumber, or any mast or spar, the property of another, whether the owner thereof be known or unknown, lying and being in any river, pond, bay, stream or inlet, or on, or near, the bank or shore thereof, within this state, he shall forfeit, for each and every such log, mast or spar, twenty dollars, to be recovered on complaint before any justice of the peace of the county, where the offence shall be committed; one half to the use of the state, and the other half to the use of the complainant; provided, that such person shall not, for the same offence, have been convicted and sentenced, under the provisions of the following section.

Such unlawful conversion declared to be larceny. 1831, 510, § 8. 1836, 243. 1839, 370.

SECT. 2. If any person shall, fraudulently and wilfully, take and convert to his own use, either by himself, or by another in his employment, any such log, mast or spar, lying or being, as described in the preceding section, for the purpose of being driven to a market, or a place of manufacture, he shall be deemed guilty of larceny, and punished for that offence, as provided in chapter, one hundred and fifty six; provided, he shall not have been convicted and sentenced, under the preceding section.

Penalties for cutting out, altering, or destroying marks. 1831, 521, § 1.

SECT. 3. If any person shall cut out, alter or destroy any mark, made on any such log, mast or spar, lying and being, as described in the first section, without the consent of the owner thereof, and with the intent to claim the same, he shall be liable to the penalty, provided in the first section; to be recovered in the same manner and to the same uses.

Double damages also recoverable by the owner. 1831, 521, § 1.

SECT. 4. Every person guilty of either of the offences described in the preceding sections, shall, whether convicted in a criminal prosecution therefor, or not, be liable to pay the owner of any such log, mast or spar, respecting which the offence was committed, double the value of the same; to be recovered in an action of debt.

What shall be presumptive evidence of guilt. 1831, 521, § 4.

SECT. 5. In any prosecution, under the preceding sections, if such log, mast or spar, shall be found in the possession of the defendant, with the marks cut out, or altered, or partly sawed or

manufactured, into lumber of any kind, or partly destroyed, not being his own property, it shall be considered, as presumptive evidence of his guilt; and the burden of proof shall be upon him to discharge himself.

SECT. 6. The owner of any such logs, masts or spars, may, at any time, by himself or his agent, enter, in a peaceable manner, upon any mill or mill brow, boom, or raft of logs or other timber, in search of any such logs, mast[s] or spars, which he may have lost; and any person, who shall wilfully prevent, or obstruct, such search, shall forfeit, for each offence, not less than twenty, nor more than fifty dollars; to be recovered, in an action of debt, to the use of the person, by whom, or on whose account, such entry was claimed.

Right of owner to search on the mill, boom, or raft of another person. Penalty for obstructing. 1831, 521, § 6.

SECT. 7. If any boom, now or hereafter erected, across or partly across the Saco river, or any of the waters connected with the said river, shall be placed, or constructed, so as to prevent the free and usual passage of timber down such river, the owner, or occupier, of the said boom, at his own expense, shall release and turn out the timber, so detained, whenever requested to do so by the owner thereof; provided, it can be done with safety.

Logs in any boom, on Saco river, to be released, on request. 1831, 521, § 5.

SECT. 8. If the owner, or occupier, of such boom shall, for two days, after such request, if it can be done with safety, neglect or refuse to turn out and release the timber, so detained, he shall forfeit to the owner of the timber, the amount of all damages, by him sustained, to be recovered by an action on the case.

Penalty, for neglect or refusal. 1831, 521, § 5.

SECT. 9. Any person, whose timber, in any of the waters of this state, shall be so intermixed with the logs, masts or spars of another, that the same cannot be conveniently separated, for the purpose of being floated to the market, or place of manufacture, may drive all logs, masts and spars, with which his own are so intermixed, toward such market or place, when no special and different provision is made, by law, for driving such timber; and shall be entitled to a reasonable compensation, from the owner, to be recovered after demand, therefor, on the said owner or agent, if known, in an action on the case; and he shall have a prior lien on the same, until thirty days after the timber shall have arrived at its place of destination, in order to enable him to attach the said logs, masts and spars, in such action; and if the owner of such logs cannot be ascertained, the property may be libeled in the manner, provided in chapter, one hundred and thirty two, and so much of the same disposed of, as shall be necessary to defray the expenses thereof; the amount of which shall be determined by the court, before which the libel is heard.

When logs of different owners are intermixed, how they may be driven. 1831, 521, § 7. 9 Greenl. 21.

Lien for the expenses.

SECT. 10. All logs or other timber, carried by freshets, or otherwise lodged upon any lands, adjoining any of the waters within this state, shall be forfeited to the owner or occupier of such lands, after the same shall have so remained two years, if such lands shall, during that time, have been improved; otherwise after six years: provided, that the owner or occupier of such lands shall, within one year, after the same shall have been found so lodged, advertise, as near as practicable, the number of pieces of timber, the time when lodged, together with the marks thereon, and the

Forfeiture of timber, lodged upon banks. 1831, 521, § 2.

Previous notice required.

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place where found, three weeks, successively, in some public newspaper in the county, if any, otherwise in the paper published by the printer of the state.

Owner may remove the same at any time, on tender of the damages and expenses. 1831, 521, § 3.

**SECT. 11.** The owner of the said timber may enter on the said land, and remove the timber, at any time before the forfeiture, as provided in the preceding section; he previously having tendered to the owner or occupier of the land, a reasonable compensation for all damages, occasioned by the lodging, remaining or removal of said timber, and the expenses of advertising the same.

Right of action, when such timber has been removed. 1831, 521, § 3.

**SECT. 12.** If the timber shall have been removed by the owner, or otherwise, without such tender, the owner of the land shall be entitled to recover, in an action of trespass, all reasonable damages, occasioned by the lodging of such timber, its remaining on the land, or the removal of the same, and his expenses of advertising, if any.

Construction of this chapter, in reference to certain local laws. 1832, 8, § 7.

**SECT. 13.** The provisions, contained in this chapter, shall not be construed, as restraining, or varying, the operation of an act, passed on the eleventh day of February, in the year, eighteen hundred and thirty two, entitled, "an act, in addition to an act, to secure to the owners, their property in logs, masts, spars and other timber," nor of any other act now in force, having local application to any particular river, or other part, or district of this state.

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**CHAPTER 68.**

**OF THE CULTURE OF SILK.**

**SECT. 1.** Bounty on cocoons, raised in the state.

**SECT. 3.** Proof to be offered to town treasurer.

2. Bounty on silk, reeled from such cocoons.

4. State to refund to the town treasurer.

Bounty on cocoons, raised in the state. 1836, 237, § 1.

**SECTION 1.** A bounty of five cents for every pound of cocoons, raised in this state, shall be paid from the treasury of the town, in which they were raised.

Bounty on silk, reeled from such cocoons. 1836, 237, § 1.

**SECT. 2.** A bounty of fifty cents, for every pound of silk, reeled from cocoons, raised in this state, shall be so paid to the person reeling the same.

Proof to be offered to town treasurer. 1836, 237, § 2.

**SECT. 3.** The treasurer of such town must be furnished with satisfactory proof, that such cocoons were raised, or reeled, in such town by the applicant; and the person, applying for either of such bounties, shall make oath, that no bounty had been received by any person for the cocoons or silk, so presented for a bounty.

State to refund to the town treasurer. 1836, 237, § 3.

**SECT. 4.** Every town treasurer shall keep an account of the money paid, by virtue of this act, and present the same, verified by his oath, to the legislature, next after the payment of any bounty, for allowance; and being found correct, the same shall be allowed and paid out of the state treasury.

## CHAPTER 69.

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## OF USURY.

SECT. 1. Legal interest, six per cent. per annum.

1. Excess, not recoverable.
2. Defence may be made by the party's oath.
4. Certain contracts excepted.
5. Excess paid, above six per cent., may be recovered back.

SECT. 6. An innocent indorsee, not to be affected.

7. Of costs, in suits on usurious contracts.
8. Action to recover excess, limited to one year.

SECTION 1. The legal rate of interest, upon the loan, or forbearance, of any money, goods or merchandise, or things in action, shall continue to be six dollars upon one hundred dollars, for one year; and at that rate, for a greater or less sum, and for a longer or shorter term.

Legal interest, six per cent. per annum. 1834, 122, § 1.

SECT. 2. If any person, upon any contract, mortgage or assurance, hereafter made, shall take, directly or indirectly, for loan of any moneys, wares, merchandise, or any other commodity, above the rate of interest, mentioned in the preceding section, and if, upon any such contract, bond, mortgage or assurance, whereupon, or whereby, there shall be reserved or taken above the rate of interest aforesaid, an action shall be commenced against the debtor, he may, on the general issue, avail himself of this act, and thereby avoid the excess, over and above said legal rate of interest.

Excess, not recoverable. 1834, 122, § 2. 13 Mass. 515. 14 Maine, 240.

SECT. 3. In any such action, sued on any such bond, contract, mortgage or assurance, wherein or whereby, a sum is secured or given, for forbearance or giving day of payment, for any particular time, then, if the creditor be alive, and the debtor, or any one of them, when there are two or more, shall come into court, where the cause is pending, and shall actually swear, that there is reserved, or secured, on such bond, mortgage or contract or assurance, above the legal rate of interest, above mentioned, or that the creditor has received more than the legal rate of interest, above stated, for the forbearance of the money, or other things, lent or sold, all such excess, above legal interest, shall be void: and the debtor shall be discharged from the payment of it, unless the creditor, or one of them, if there be more than one, will swear, that he has not, directly or indirectly, wittingly taken or received more than the legal rate of interest; and that by such bond, mortgage, contract or assurance, there is not reserved more, than such legal rate of interest.

Defence may be made by the party's oath. 1834, 122, § 3. 4 Mass. 516. 9 Mass. 326. 10 Mass. 502. 16 Mass. 288. 1 Metc. 106.

SECT. 4. Nothing in this chapter shall extend to letting cattle, or other usages of the like nature, in practice among farmers, or maritime contracts among merchants, as bottomry, insurance, or course of exchange, as has been heretofore practised.

Certain contracts excepted. 1834, 122, § 3. 12 Mass. 365.

SECT. 5. Whoever, on any such loan, shall in any manner pay a greater sum or value, than is by law allowed to the creditor, may, or his personal representatives may, recover of the creditor, or his representatives, by action at law, the excess, so received by such creditor, whether in money or other property.

Excess paid, above six per cent., may be recovered back. 1834, 122, § 4.

SECT. 6. The preceding section shall not extend to bills of exchange, or promissory notes, payable to order or bearer, in the

An innocent indorsee, not to be affected. 1834, 122, § 4.

**CHAP. 69.** hands of an indorsee or holder, who shall have received the same, in good faith, and for a valuable consideration, and who had not, at the time of discounting such bill or note, or paying such consideration, actual notice, that the same had been given for an usurious consideration, or upon an usurious contract.

Of costs, in suits on usurious contracts. 1834, 122, § 5.

**SECT. 7.** In a suit brought, where more than legal interest shall be reserved or taken, the party, so reserving and taking, shall recover no costs, but shall pay costs to the defendant; provided the damages shall be reduced by the oath of any one of the defendants, where there are more than one, by reason of such usurious interest.

Action to recover excess, limited to one year. 1834, 122, § 4.

**SECT. 8.** The action, mentioned in the fifth section of this chapter, must be commenced within one year, next after the payment of the money or property therein mentioned, or the same will be barred.

## CHAPTER 70.

### OF THE STANDARD WEIGHT OF POTATOES.

**SECT. 1.** Standard weight of a bushel.

2. When sold, to be weighed, on request.

**SECT. 3.** Forfeiture, by the party refusing.

Standard weight of a bushel.

1835, 181, § 1.

When sold, to be weighed, on request.

1835, 181, § 2.

Forfeiture by the party refusing.

1835, 181, § 2.

**SECTION 1.** The standard weight of a bushel of potatoes, in good order and fit for shipping, shall be sixty four pounds.

**SECT. 2.** Whenever potatoes are sold, the measure shall be ascertained by weight, as aforesaid, when the vender or vendee shall so request.

**SECT. 3.** Any vender or vendee of potatoes, when requested, who shall refuse to conform to the foregoing provisions, shall forfeit, for each offence, five dollars for every hundred bushels, and, in the same proportion, for any greater or less quantity, to the person who shall prosecute for the same, within thirty days after the offence was committed.

## CHAPTER 71.

### OF MEASURERS OF SALT, CORN AND GRAIN.

**SECT. 1.** Appointment of measurers. Oath.

Fees. Hogshead of salt to consist of eight bushels.

2. Party may require salt, &c. to be measured.

Appointment of measurers.

Oath. Fees.

Hogshead of salt to consist of eight bushels.

1829, 419.

1836, 208, § 1.

**SECTION 1.** Aldermen of cities, and selectmen of towns, are authorized to appoint measurers of salt, corn and grain, in their respective cities or towns, to hold their office for one year; who shall be under oath, and receive such fees of the purchaser, as the aldermen or selectmen, shall, from time to time, establish; and in

every contract, made in this state, for the sale and delivery of salt, by the hogshead, such hogshead shall consist of eight bushels. CHAP. 71.

SECT. 2. Whenever the buyer or seller shall request, salt, corn or grain, in cities or towns, where such sworn measurers reside, shall be measured by them. Party may require salt, &c. to be measured. 1836, 208, § 2.

## CHAPTER 72.

### OF THE STANDARD WEIGHT OF RUTA BAGA, SUGAR BEETS, MANGEL WURTZEL, AND RYE AND INDIAN MEAL.

SECT. 1. Standard weight of ruta бага, sugar beet and mangel wurtzel. | SECT. 2. Of rye and indian meal.  
3. Penalty, for refusing to conform.

SECTION 1. The standard weight of all ruta бага, sugar beet and mangel wurtzel, in good order and fit for market, shall be sixty four pounds for a bushel; and the measure shall so be determined, when either the vender or vendee shall request it. Standard weight of ruta бага, sugar beet and mangel wurtzel. 1838, 309, § 1.

SECT. 2. The standard weight of all rye and indian meal, offered for sale, shall be fifty pounds per bushel. Of rye and indian meal. 1836, 247.

SECT. 3. If any vender, or vendee, shall wilfully refuse to conform to the provisions of this chapter, he shall forfeit five dollars, for every one hundred bushels; and in the same proportion, for a greater or less quantity. Penalty, for refusing to conform. 1838, 309, § 1, 2.

## CHAPTER 73.

### OF WEIGHTS AND MEASURES.

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| <p>SECT. 1. Of the standard of weights and measures.</p> <p>2. State sealer, to cause other weights and measures to be made, conformable to the standards.</p> <p>3. Also to procure suitable standard balances.</p> <p>4. Description of beams, weights and measures, which are to be procured, or preserved, by the treasurer of the state.</p> <p>5. Also by county treasurers.</p> <p>6. County standards, to be regulated by the state standards, every ten years.</p> <p>7. Forfeiture for neglect.</p> <p>8, 9. Of town standards of beams, weights and measures.</p> <p>10. Of the town seal.</p> | <p>SECT. 11. Penalty on town treasurer, for neglect.</p> <p>12. Of sealer's appointment in towns, &amp;c.</p> <p>13. To be sworn. Penalty for refusal.</p> <p>14. Penalty for selectmen, &amp;c. neglecting to appoint.</p> <p>15. Custody of the standards and seals.</p> <p>16, 17. Duty of the sealer.</p> <p>18. Penalty, for neglecting to have weights, &amp;c. sealed.</p> <p>19. Penalty for sealer's neglect.</p> <p>20. Dearborn's, or Hill's steel yard, may be used.</p> <p>21. Of selling by heaped measures. Penalty for selling by beams, &amp;c. not sealed.</p> <p>22. Of gross or avoirdupois weight.</p> |
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SECTION 1. The standard of weights, recently furnished by the United States, and adopted by this state, shall be continued, and Of the standards of weights and measures. 1839, 375, § 1.

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used, as the standard of weights for the state, instead of those formerly used; and the measures, adopted by the United States, as standard measures, when furnished to this state, shall be adopted and used, as standard measures of this state.

State sealer to cause other weights and measures to be made, conformable to the standard.  
1839, 375, § 2.

**SECT. 2.** It shall be the duty of the state sealer of weights and measures, to cause all such weights, of a smaller denomination, than those furnished by the United States, as may be necessary to make a complete and perfect set, to be compared and regulated by the standard weights, already adopted; and also to cause all such measures, as are necessary, to make a complete and perfect set, to be compared and regulated by the standard, which may be furnished by the United States.

Also to procure suitable standard balances.  
1839, 375, § 3.

**SECT. 3.** It shall be the duty of the state sealer aforesaid, to procure, at the expense of the state, if not already procured, a suitable gold standard balance; also a suitable standard balance, for avoirdupois weights; both of which, together with the weights and measures, shall be kept at the state house; to be used only for trying and regulating other weights and measures, with the standard.

Description of beams, weights and measures, which are to be procured, or preserved, by the treasurer of the state.  
1821, 131, § 1.

**SECT. 4.** It shall be the duty of the treasurer of the state, at the expense of the state, to procure and preserve as public standards, until otherwise provided, in the manner mentioned in the first section, and which shall be used only as such, the following beams, weights and measures, to wit: one bushel, one half bushel, one peck, one half peck, one ale quart, one wine gallon, one wine half gallon, one wine quart, one wine pint, one wine half pint, and one wine gill; said measures to be made of copper or pewter, conformable, as to contents, to said standard measures; and as to breadth, that is to say, the diameter of the bushel, not less than eighteen inches and a half, containing thirty two Winchester quarts; of the half bushel, not less than thirteen inches and three quarters, containing sixteen Winchester quarts; of the peck, not less than ten inches and three quarters, containing eight Winchester quarts; and of the half peck, not less than nine inches, containing four Winchester quarts; the admeasurement to be made in each instance, within side of the measure; also one ell, one yard; one set of brass weights, to four pounds, computed at sixteen ounces to the pound, with fit scales and steel beam: also a good beam and scales, and a nest of troy weights from one hundred and twenty eight ounces down to the least denomination, with the weight of each weight, and the length of each measure marked or stamped thereon respectively, and sealed with a seal, to be procured and kept by the treasurer aforesaid; and also one fifty six pound weight, one twenty eight pound weight, one fourteen pound weight and one seven pound weight, made of iron.

Also by county treasurers.  
1821, 131, § 2.

**SECT. 5.** The treasurer of each county, at the expense thereof, shall procure, if not already procured, one complete set of beams, and of brass, copper, pewter and iron weights, and of the measures, before mentioned, except the bushel measure, tried, proved and sealed by the state standards; the said measures, as to breadth, as well as contents, to conform to the state standards, as before mentioned; and the county treasurer shall preserve them for the use of such county, and to be used only, as standards.

**SECT. 6.** Each county treasurer shall, at the expense of the county, once in every ten years, commencing the computation from the first day of July, in the year one thousand eight hundred and thirty nine, have the county standard of weights and measures compared, proved and sealed, by the state standard of weights and measures.

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County standards, to be regulated by the state standards, every ten years. 1839, 375, § 4.

**SECT. 7.** Any county treasurer, neglecting to comply with his duty in the above mentioned particulars, shall forfeit and pay, for each neglect, the sum of two hundred dollars; to be recovered in an action of debt, in the name of the state.

Forfeiture for neglect. 1821, 131, § 2.

**SECT. 8.** The treasurer of each town and plantation, in the state, shall procure, at the expense of such corporation, if the same has not been already done, and constantly preserve, as town standards, a complete set of beams, weights, and copper and pewter measures, except the bushel measure, conformable to the state standards; and excepting also, a nest of troy weights, other than those from the lowest denomination to the size of eight ounces, which he is required to procure and keep.

Of town standards of beams, weights and measures. 1821, 131, § 3.

**SECT. 9.** Any town treasurer may procure a wooden half bushel, peck and half peck measure, conformable, as to breadth and contents, to the copper or pewter measure of the same denomination, in lieu of such copper or pewter measure; all which measures he shall cause to be proved and sealed, by the state or county standard, once in every ten years, computing from the first day of July, eighteen hundred and forty; and if the same has not been done, since the second day of March, in the year eighteen hundred and thirty nine, he shall have the same done immediately.

Same subject. 1821, 131, § 3. 1839, 375, § 4.

**SECT. 10.** Each town treasurer shall constantly have and keep a town seal, at the expense of the town, and for the purposes hereinafter mentioned.

Of the town seal. 1821, 131, § 3.

**SECT. 11.** Every such treasurer, neglecting his duty, required in the three preceding sections, shall forfeit and pay, for each neglect, one hundred dollars; one half to the use of the town, and the other half to him, who shall sue for the same.

Penalty on town treasurer, for neglect. 1821, 131, § 3.

**SECT. 12.** The selectmen of each town, and the assessors of each plantation, shall annually appoint a sealer of weights and measures, within the same; and they may remove any person, so appointed by them: and in case of vacancy in the office, however occasioned, they may appoint a suitable person, to fill his place.

Of the sealer's appointment in towns, &c. 1821, 131, § 4.

**SECT. 13.** Every person, appointed to the office of sealer, shall, on his acceptance of the office, be duly sworn; and if any person, so appointed and notified thereof, shall refuse, for seven days, to accept the office and be sworn, he shall forfeit and pay five dollars; to be recovered and appropriated in the same manner, as in case of fines for refusing to serve in other town offices.

To be sworn. Penalty for refusal. 1821, 131, § 4.

**SECT. 14.** Any selectman or assessor, who shall neglect to perform the duties appertaining to his office, under the twelfth section, shall forfeit ten dollars for each month's neglect; to be recovered in like manner and to like uses.

Penalty for selectmen, &c. neglecting to appoint. 1821, 131, § 4.

**SECT. 15.** Each sealer of weights and measures, when appointed and sworn, shall receive the standards and seal from the treasurer, giving a receipt therefor, describing them and their condition, and

Custody of the standards and seals. 1821, 131, § 5.



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Duty of the sealer.  
1821, 151, § 6.

**SECT. 16.** Every such sealer shall, annually, in the month of May, post notifications in different parts of the town or place to which he belongs, stating therein the times and places, where, he will attend to the proof and sealing of such weights and measures, as may be brought to him for that purpose. If any weights and measures, that shall be found not conformable to the standard, he shall deface or destroy, unless he can bring the same to the just standard.

Same subject.  
1821, 151, § 7.

**SECT. 17.** Such sealer is authorized, and required, to visit the houses of innholders, the ware houses and stores of traders, and retailers of spirituous liquors, and the dwellings of such other inhabitants, as shall neglect to send to him beams, weights and measures, and there to prove and seal the same.

Penalty, for neglecting to have weights, &c. sealed.  
1821, 151, § 7.

**SECT. 18.** Every person, refusing or neglecting to send to the sealer beams, weights and measures, tried, proved and sealed, shall be liable to a fine of ten dollars; one half to the use of the town, and the other half to the sealer.

Penalty for sealer's neglect.  
1821, 151, § 7.

**SECT. 19.** If any such sealer shall neglect his duty, in the cases mentioned in this chapter, he shall pay ten dollars to the use of the town, and the other to the person, who shall sue for the same, with costs.

Dearborn's, or Hill's steel yard, may be used.  
1821, 131, § 10.

**SECT. 20.** In all cases of weighing, the vibrating scale invented by Benjamin Dearborn, or the vibrating steelyard invented by Benjamin Dearborn and improved by Samuel Hills, shall be used; provided, that before being offered for sale, or the same shall be used, each beam, and the poises thereof, shall be sealed by the public sealer of weights and measures, appointed according to law.

Of selling by heaped measures.

**SECT. 21.** All measures, by which fruit and other things are usually sold by heaped measures, shall be sold, shall be confined as to capacity and breadth, to the public standard; and no person shall sell, or expose to sale, any fruit or other thing sold by heaped measure, otherwise than is mentioned in this chapter, or shall sell or expose to sale any goods or commodities by any other beams, weights or measures, than those provided by law, sealed, as aforesaid, the offender shall forfeit for each offence less than one dollar, nor more than ten dollars; one moiety of the fine to the use of the town or plantation, and the other to the sealer, who shall prosecute therefor.

Penalty for selling by beams, &c. not sealed.  
1821, 131, § 11.

Of gross or avoirdupois weight.  
1823, 404, § 1.

**SECT. 22.** All such articles, as have been sold or exchanged in any market or town in this state, by gross or avoirdupois weight, shall be sold or exchanged by the following regulations: twenty five avoirdupois pounds shall constitute a quarter; four quarters, one hundred; and twenty hundred quarters, one thousand; and all other articles, usually sold by tale, shall be sold by decimal hundred, any law to the contrary notwithstanding.

**CHAPTER 74.**CHAP. 74.

## OF PREVENTION OF FRAUD IN THE SALE OF OILS.

SECT. 1. What shall be deemed to be sold, as sperm oil. | SECT. 2. Damages for adulteration.  
3. Forfeiture.

SECTION 1. All oils, sold under the names of sperm, summer, fall and winter oils, shall be deemed to be sold, as and for pure sperm oil; and the test of pure sperm oil is hereby declared, to be Southworth's Oleometer.

What shall be deemed to be sold, as sperm oil.  
1833, 60, § 1.

SECT. 2. All oils sold under the said names, which shall be adulterated from pure sperm oil, shall be deemed, whale oil; and the vender shall be liable to the purchaser for the difference in value, between pure sperm oil and whale oil, unless the adulteration is made known to the purchaser at the time of sale; to be recovered in an action on the case.

Damages for adulteration.  
1833, 60, § 2.

SECT. 3. Whoever shall sell any oil, commonly known under the names, specified in the first section, which may have been adulterated, by a mixture of whale oil, inferior oil, spirits of turpentine or other matter, without disclosing the full amount of adulteration to the purchaser, shall forfeit fifteen dollars, for every such offence, to any person, who shall sue for the same.

Forfeiture.  
1833, 60, § 3.

**CHAPTER 75.**

## OF HAWKERS AND PEDLERS.

SECT. 1. Penalty for peddling goods. Articles also forfeited. | SECT. 4. County commissioners may license venders of tin ware.  
2. Mode of recovery. | 5. How carriages employed shall be marked. License to be exhibited to certain officers. Penalty.  
3. Certain exceptions.

SECTION 1. Every hawk, pedler or petty chapman, or other person, going from town to town on foot, or with a horse, carriage or otherwise, carrying to sell, or exposing to sale, any feathers, indigo, tin ware, books, medicines, nostrums, essences, or any other goods or merchandise, shall forfeit a sum, not exceeding fifty dollars, nor less than twenty dollars, to be recovered by complaint or indictment; and all the articles and merchandise aforesaid; one half to the town, where the offence is committed, and the other half to the prosecutor.

Penalty for peddling goods. Articles also forfeited.  
1821, 171, § 1.  
2 Pick. 103.

SECT. 2. Any justice, on complaint made to him, may cause the arrest of the party accused, and the seizure of such goods, and detain the same until trial; and in case of conviction of the offender, the same shall be decreed forfeited to the uses aforesaid, and sold in the same manner, as goods seized on execution for debt.

Mode of recovery.  
1821, 171, § 1.

SECT. 3. Nothing in the preceding section shall prevent any person from vending any farming utensils or wooden wares, or any articles of domestic manufacture, made principally of wood, or from

Certain exceptions.  
1821, 171, § 1.

**CHAP. 75.** selling or marketing any fish, fruits, provisions, garden seeds, combs, leather shoes, or potter's earthen ware.

County commissioners may license venders of tin ware. 1821, 171, § 2.

**SECT. 4.** The county commissioners may license any person in their county, to sell tin ware, for one year from the time of application therefor, on his producing a certificate from the selectmen of the town, where he resides, that he is of good moral character; and the person, so licensed, may personally vend any such tin ware.

How carriages employed shall be marked. License to be exhibited to certain officers. Penalty. 1821, 172, § 3.

**SECT. 5.** Every person, so licensed, shall have his name printed in large letters, at least one inch wide, and also the words, *licensed by C. C.* and also the name of the county, where the license was granted, in some conspicuous place on every carriage, employed by him, for conveyance of such ware; and he shall also exhibit the certificate of his license, when required by any justice of the peace, sheriff, selectman or constable, within the limits of their respective jurisdiction; and if he shall fail in either of the foregoing particulars, he shall forfeit ten dollars to any person, who shall sue for the same.

## TITLE FIFTH.

### Of corporations of various kinds, and proprietors, in common, of real estate.

#### CHAPTER 76. Of corporations.

77.\*

78. Of manufacturing corporations.

79. Of insurance companies.

80. Of turnpike corporations and toll bridges.

81. Of rail roads.

82. Of agricultural and horticultural societies.

83. Of aqueducts.

84. Of libraries and their proprietors.

85. Of management of lands and wharves, and other real estate, lying in common.

86. Of mills and their repairs.

#### CHAPTER 76.

##### OF CORPORATIONS.

##### SECT. 1. General powers of corporations.

2. Clerk's office and records.

3. Clerk to file certificate of his appointment.

4. Fict and implied contracts by corporations.

5. Privileges allowed to foreign corporations.

6. Regulations and by laws of corporations.

7. Manner of calling the first meeting.

8. When meetings may be called by a justice of the peace.

9. Who may preside at the opening of such meeting.

10. Powers of presiding officers.

11. Any meeting may be legal, if all the members assent.

12. Corporations may hold real estate. Transfer of shares.

13. Annual return to assessors of towns, of the names of stockholders.

14. Returns to the secretary of state.

15. May be sent by mail.

16. Forfeiture for neglect to make returns.

##### SECT. 17. Corporate property, and certain franchises liable for debts.

18. Stockholders liable for corporate debts in certain cases.

19. Proceedings in such cases.

20. Special action for the same.

21. Clerk to disclose the names and liability of stockholders.

22. Proceedings in equity or law, when stockholders are liable.

23. Certain acts of incorporation may be repealed or altered.

24. Extension of charters, for settlement of corporate concerns.

25. Appointment of trustees to close concerns.

26. Chancery proceedings in such cases.

27. Powers, duties and proceedings of the trustees.

28. Individual rights, on expiration of charters.

29. Liability of members of quasi corporations, and mode of indemnity.

30. Further liability of stockholders in corporations.

31. Foreign corporations liable to suits.

SECTION 1. All corporations shall, where no other provision is specially made, be capable, in their corporate name, to sue and be General powers of corporations.

\* Chapter 77, entitled OF BANKS, as originally reported by the revising commissioners, was not enacted, in consequence of the disagreement of the senate to certain amendments, proposed by the house of representatives.

## CHAP. 76.

1836, 200, § 1.  
217, § 1.  
1837, 289, § 1.  
16 Maine, 224.  
21 Pick. 417.

Clerk's office,  
and records.  
1837, 289, § 1.

Clerk to file  
certificate of  
his appoint-  
ment.  
1837, 289, § 2.

Parol and im-  
plied contracts  
by corporations.  
10 Mass. 397.  
7 Greenl. 118.  
1 Pick. 297.  
8 Pick. 178.

Privileges al-  
lowed to for-  
eign corpora-  
tions.  
10 Mass. 91.

Regulations and  
by laws of cor-  
porations.  
2 Mass. 269.

Manner of cal-  
ling the first  
meeting.  
1836, 200, § 2.

When meetings  
may be called  
by a justice of  
the peace.  
1835, 151, § 1.  
3 Fairf. 398.  
3 Pick. 232.

sued, appear, prosecute and defend to final judgment and execution, in any courts or elsewhere; to have a common seal, which they may alter at pleasure; to elect, in such manner as they shall determine to be proper, a clerk and all other necessary officers, and to fix their compensation, and define their duties and obligations; and to make by laws and regulations, consistent with the laws of the state, for their own government, and for the due and orderly conducting of their affairs, and the management of their property.

SECT. 2. Every corporation, instituted under the authority of this state, shall keep the office of its clerk, together with its records and papers, at some place within this state.

SECT. 3. The clerk of every private corporation shall, within twenty days after his acceptance of the office, file a certificate of his appointment, in the office of the register of deeds in any county or district, where such corporation is established, or in which it may have a place of business, or general agent.

SECT. 4. Parol contracts may be binding upon aggregate corporations, if made by an agent, duly authorized by a corporate vote, or under the general regulations of the corporation; and contracts may be implied, on the part of such corporations, from their corporate acts, or those of an agent, whose powers are of a general character.

SECT. 5. Corporations, whether public or private, which exist by the laws of any other state, or within any foreign jurisdiction, may sue, in this state, by their corporate name, and the acts of their agents, in this state, shall have the same validity, as the acts of agents of foreign private persons, unless expressly prohibited by law.

SECT. 6. All corporations, instituted in this state, may, by their by laws, where no other provision is specially made, determine the manner of calling and conducting all meetings; the number of members, that shall constitute a quorum; the number of shares, that shall entitle the members to one or more votes; the mode of voting by proxy; the mode of selling shares for the non payment of assessments, and the tenure of office of the several officers; and they may annex suitable penalties to such by laws, not exceeding in any case the sum of twenty dollars, for any one offence; provided, that no such by laws shall be made by any corporation, repugnant to any provisions of its charter.

SECT. 7. The first meeting of all corporations shall, unless otherwise provided for in their acts of incorporation, be called by a notice, signed by any one or more of the persons named in the act of incorporation, and setting forth the time, place and purposes of the meeting; and such notice shall, seven days at least before the meeting, be delivered to each member, or published in some newspaper of the county, where the corporation may be established, or, if there be no newspaper in the county, then, in some newspaper of an adjoining county.

SECT. 8. Whenever, for want of sufficient by laws for the purpose, or of officers duly authorized, or from the improper neglect or refusal of such officers, or from other legal impediment, a legal meeting of any corporation cannot be otherwise called, any justice of

the peace, in the county where it is desirable to hold such meeting, or where such corporation is established, if it be local, may, on a written application of three or more members thereof, issue a warrant to either of said members, directing him to call a meeting of the corporation, by giving such notice as is required in the preceding section; and, where the law requires notice in some public newspaper, or by posting up in some public place, the justice shall in his warrant designate the paper or public place for such notice, as the case may be.

**SECT. 9.** Whenever a meeting of any corporation shall be called, by a warrant from a justice of the peace, pursuant to any provision of law, said justice, or the person to whom such warrant is directed, may call the meeting to order and preside therein, until a clerk shall be duly chosen and qualified, if there be no officer present, whose duty it may be to preside; provided, that the justice or other person, organizing such meeting, shall not be responsible for any error in judgment, in receiving or rejecting the vote of any person, claiming to be a member.

**SECT. 10.** The person, legally presiding at a meeting of any corporation, shall have the same power and authority, as is given by law to moderators in town meetings.

**SECT. 11.** When all the members of a corporation shall be present at any meeting, however called or notified, and shall sign a written consent thereto on the record of such meeting, the doings of such meeting shall be as valid, as if legally called and notified.

**SECT. 12.** Every corporation, instituted in this state, may hold lands to an amount authorized by law, and may convey the same. Whenever the capital stock of any such corporation is divided into shares, and certificates thereof issued, such shares may be transferred by indorsement and delivery of the certificates thereof; such indorsements being by the signature of the proprietor, or his attorney or legal representative; but such transfer shall not be valid, except between the parties thereto, until the same shall have been so entered on the books of the corporation, as to show the names of the parties, the number and designation of the shares, and the date of the transfer.

**SECT. 13.** The cashiers of banks, and the clerks of all other corporations, instituted under the authority of this state, holding property liable to be taxed, shall under oath, annually, within seven days after the first day of May, return to the assessors of every town, in which any of the stockholders may reside, the amount of stock owned on the said first day of May, and the names of the stockholders, resident in such town, so far as known to such cashiers or clerks, and the amount of stock, taken up and actually paid in, in such corporation; and such returns shall be the basis of taxation on said property.

**SECT. 14.** The said cashiers and clerks shall also, annually, within seven days after the first day of January, make return to the secretary of the state, of the names of all the stockholders, their residence, and the amount of stock owned by each, and the whole amount of stock, taken up and actually paid in, as aforesaid, on the said first day of January; and it shall be the duty of the secretary

CHAP. 76.

Who may preside at the opening of such meeting. 1829, 439.

Power of presiding officer. 1829, 439.

Any meeting may be legal, if all the members assent. 8 Greenl. 365, 372.

Corporations may hold real estate. Transfer of shares. 1838, 325, § 1.

Annual returns, to assessors of towns, of the names of stockholders. 1837, 280, § 1.

Returns to secretary of state. 1837, 280, § 2.

**CHAP. 76.** to lay the same before the legislature, within the first twenty days of its session.

May be sent by mail.  
1837, 280, § 4.

**SECT. 15.** If any such cashier or clerk, shall, within the times specified, deposit his returns, required by the two preceding sections, in some convenient post office, directed to the assessors of the proper towns, or to the secretary of state, respectively; it shall be deemed a sufficient compliance with the provisions of said sections.

Forfeiture for neglect to make returns.  
1837, 280, § 3.

**SECT. 16.** If the clerk or cashier of any such corporation, holding property as aforesaid, shall neglect or refuse to make the returns, required by the thirteenth and fourteenth sections of this chapter, the said corporation shall forfeit five hundred dollars, to be recovered in an action of debt; one half to the use of the prosecutor, and the other half to the use of the state.

Corporate property and certain franchises liable for debts.  
1821, 60, § 2, 9,  
10, 13, 14, 15.  
1831, 519, § 19.

**SECT. 17.** The corporate property of any company incorporated in this state, and the franchise of any corporation having a right to receive toll, with the privileges and immunities thereof, shall be liable to attachment on mesne process, and to be levied upon by execution for the debts of such corporation, in the manner prescribed in chapters, ninety four, one hundred and fourteen, and one hundred and seventeen.

Stockholders liable for corporate debts in certain cases.  
1836, 200, § 3, 4.  
21 Pick. 419.

**SECT. 18.** In all corporations, created by the legislature, after the sixteenth day of February, in the year, eighteen hundred and thirty six, excepting banking corporations, unless otherwise specified in their charter, in case of deficiency of attachable corporate property or estate, the individual property, rights and credits of every stockholder thereof shall be liable to be taken on execution, to the amount of his stock and no more, for all debts of the corporation, contracted during his ownership of such stock; and such liability shall continue, notwithstanding any subsequent transfer of such stock, for the term of one year, after the record of the transfer thereof on the books of the corporation, and for the term of six months, after judgment recovered against such corporation, in any suit commenced within the year aforesaid; provided, that in every such case, the officer, holding the execution, shall first ascertain and certify upon such execution, that he cannot find corporate property or estate.

Proceedings, in such cases.  
1836, 200, § 3, 4.

**SECT. 19.** In such case, the officer may cause the property of such stockholder to be levied upon by execution, in the same manner, as if the same were against him, individually, after giving him forty eight hours' previous notice of his intention, and the amount of the debt or deficiency, if he reside within the state, or, if not within the state, to his agent, if he have any within the state, otherwise to the clerk of the corporation; unless such stockholder, his agent, or the said clerk, on demand and notice as aforesaid, shall disclose and shew to the execution creditor, or the said officer, attachable corporate property or estate, sufficient to satisfy said execution and all fees.

Special action for the same.  
1836, 200, § 3, 4.

**SECT. 20.** Such creditor, after demand and notice, as mentioned in the preceding section, at his election, may have an action on the case against any such stockholder, to recover of him individually the amount of his execution and costs, or of the deficiency, as aforesaid, not exceeding the amount of the stock held by such stockholder.

**SECT. 21.** The clerk of every such corporation, on demand of any officer, legally holding any execution against the same, shall furnish the officer with the names, places of residence, so far as to him known, and the amount of liability of every person liable as aforesaid.

CHAP. 76.

Clerk to disclose names and liability of stockholders. 1836, 200, § 6.

**SECT. 22.** When the officers or members of a corporation, or any of them, are liable for the debts of the corporation, or for any acts of such officers or members, respecting the business of the corporation, and also when any of the said officers or members are liable to contribute for money paid by any other or others of them, on account of any such debts or acts, the money due may be recovered by a bill in equity, in the supreme judicial court; and the said court may make all such orders and decrees therein, as may be necessary to do justice between the parties; or by action at law, at the election of the party.

Proceedings in equity or law, when stockholders are liable. 1836, 200, § 5. 13 Pick. 484.

**SECT. 23.** All acts of incorporation, passed after the seventeenth day of March, in the year, eighteen hundred and thirty one, or which may hereafter be passed, shall, at all times, be liable to be amended, altered or repealed, at the pleasure of the legislature, in the same manner, as if an express provision to that effect were therein contained; unless there shall have been inserted, in such act of incorporation, an express limitation or provision to the contrary; but nothing in this section shall be construed as superseding or abrogating any control, which, by the principles of the common law, is vested, in any of the judicial courts, over any corporation, or any of its officers, in cases of misconduct, negligence, irregularity of procedure, or other cause, which, on such principles, would require the interference of such court.

Certain acts of incorporation may be repealed or altered. 1831, 503. 16 Maine, 224. 7 Pick. 303.

**SECT. 24.** All corporations, whose charters shall expire by their own limitation, or be annulled by forfeiture or otherwise, shall be continued bodies corporate, for three years from such time, for the purposes of prosecuting and defending suits by or against them, of gradually settling and closing their concerns, of disposing of their property, and of dividing their capital stock, and for no other purpose.

Extension of charters for settlement of corporate concerns. 1839, 400, § 1. 18 Pick. 63.

**SECT. 25.** When the charter of any corporation shall expire or be annulled, any creditor or stockholder of such corporation may apply to the supreme judicial court, which may appoint one or more persons, as trustees, to take charge of the estate and effects of such corporation, with power to collect the debts and property of the same, and to prosecute and defend in the name thereof, all necessary suits in law.

Appointment of trustees to close concerns. 1839, 400, § 2.

**SECT. 26.** The said court shall have jurisdiction, in chancery, of such application, and of all questions arising in the proceedings thereon; and may make such orders, injunctions and decrees therein, as justice and equity shall require.

Chancery proceedings in such cases. 1839, 400, § 2.

**SECT. 27.** The said trustees shall pay all debts due from the corporation, if the funds in their hands shall be sufficient therefor; and, if not, they shall distribute the same, ratably, among all the creditors, who shall prove their debts in the manner, that shall be directed by any order or decree of the court for that purpose; and, if there shall be any balance remaining, after the payment of said

Powers, duties, and proceedings of the trustees. 1839, 400, § 2.



**CHAP. 78.**

Certificate of shares.  
1821, 137, § 3.  
Transfer of shares.  
1838, 325.

**SECT. 8.** Every stockholder shall have a certificate, under the seal of the corporation, and signed by the treasurer, expressing the shares, by him held, and the number thereof.

**SECT. 9.** Stock, in any manufacturing or other corporation, incorporated in this state, the capital of which is divided into shares, may be transferred by indorsement and delivery of the certificate thereof; such indorsement, being by the signature of the proprietor or his attorney; but the title to such stock shall not pass from such proprietor, until such transfer has been so far entered on the corporate records, as to show the names of the parties therein, and the date of the transfer.

Assessments on shares.  
1821, 137, § 5.

**SECT. 10.** Every such company may, from time to time, at any legal meeting called for that purpose, assess, for each share, such sums of money as the company shall think proper, not exceeding in the whole the amount at which each share shall be originally limited, for raising its capital for the objects of its incorporation and incidental expenses; and such sums assessed shall be paid to the treasurer, at such times and by such instalments, as the company shall direct.

Collection of assessments.  
1821, 137, § 5.

**SECT. 11.** If the proprietor of any share shall neglect to pay any sum, duly assessed thereon, for the space of thirty days after the time appointed for the payment thereof, the treasurer of the company may sell, by public auction, a sufficient number of the shares of such delinquent proprietor to pay all assessments, then due from him, with all necessary and incidental charges.

Sale of delinquent shares.  
1821, 137, § 5.

**SECT. 12.** The treasurer shall give notice of the time and place, appointed for such sale, and of the sum, due on each share, by advertising the same three weeks successively before the sale, in some newspaper printed in the county where the manufactory is established, if any is printed therein, otherwise in some adjoining county, or in the newspaper published by the printer to the state; and a certificate of such sale, made by the treasurer and recorded, as before provided in this chapter, shall transfer said shares to the purchaser, and he shall be entitled to a certificate therefor.

Additional shares.

**SECT. 13.** Every such company, at any meeting called for the purpose, may also increase its capital stock, by adding to the number of shares, not exceeding the limits of its charter.

Annual statements, to be published by the treasurer.  
1823, 385, § 2.

**SECT. 14.** The treasurer of every such company shall give notice, annually, in some newspaper printed in the county, where the manufactory is established, and in case no paper is printed therein, then in some newspaper in an adjoining county, or in the newspaper published by the printer to the state, of the amount of all the assessments, voted by the company, and actually paid in, and the net amount of the then existing capital stock. If any such treasurer shall neglect or refuse to give notice, or shall knowingly publish a false statement, he shall be fined, not exceeding two thousand dollars, or be imprisoned not exceeding one year, on indictment and conviction thereof.

Dividends of profits.  
1823, 385, § 3.

**SECT. 15.** The directors of every such company may make dividends amongst the stockholders, from time to time, of their net profits; but no dividend, reducing the capital stock of such company, or the debts due to the same, shall be made, until all the debts due therefrom shall have been paid.

**SECT. 16.** Any director, officer or other member of such company, who shall vote for, or aid in making any dividend, against the provisions of the foregoing section, shall be fined, not exceeding two thousand dollars, or imprisoned for a term, not exceeding twelve months; and all sums, received by any stockholder for any such dividend, shall be liable to be recovered of such member by any creditor of such corporation, in an action on the case.

**CHAP. 78.**

Liability, for making unlawful dividends. 1828, 385, § 3.

**SECT. 17.** Every agent or other person, having charge of any property of such company, on request of any public officer, having for service a writ, against such company, on mesne process or execution, shall furnish to such officer the names of the directors and clerk thereof, and a schedule of all its property, including debts, so far as he may have knowledge of the same.

Obligation to disclose property to officers, having precepts. 1828, 385, § 4.

**SECT. 18.** If any such officer, holding an execution, shall be unable to find other property belonging to such company, liable to attachment, he, or the judgment creditor, may elect, in whole or part, to satisfy such execution by any debt or debts due such company, not exceeding the amount thereof; and it shall be the duty of any agent, or other person, having the custody of any evidence of such debt, to deliver the same to the officer, for the use of the creditor; and such delivery, with a transfer to the officer, in writing, for the use of the creditor, and notice to the debtor, shall be a valid assignment thereof; and such creditor may sue for and collect the same, in the name of such company, subject to such equitable set off, on the part of the debtor, as may be in other assignments.

Levy of executions on debts due the corporation. 1828, 385, § 4.

**SECT. 19.** Every such agent, or other person, who shall unnecessarily neglect or refuse to comply with the provisions of the two preceding sections, shall be fined a sum, not exceeding four times the amount due on such execution, or be imprisoned for a term not exceeding one year.

Penalty, for refusal to disclose property. 1828, 385, § 4.

**SECT. 20.** When any suit or prosecution shall be pending in any court, for the violation of any of the provisions of this chapter, it shall be the duty of the clerk or other person, having the custody of the books of any such company, to produce the same at the trial, reasonable notice in writing having been given for that purpose; if he shall neglect or refuse so to do, he shall be liable to the like payment, fine or punishment, as the party, so on trial, would have been on conviction.

Production of company books in court, in certain cases. 1828, 385, § 5.

**SECT. 21.** The legislature, from time to time, upon due notice to any such corporation, may make further provisions and regulations, for the management of the business of the corporation and for the government thereof, or wholly repeal any act, or part thereof, establishing any such corporation, as shall be deemed expedient.

Charters subject to legislative control. 1821, 137, § 6. Mass. laws, 1809, March 3.

## CHAPTER 79.

### OF INSURANCE COMPANIES.

**SECT. 1.** How far subject to the provisions of this chapter. | **SECT. 2.** President and directors.

**CHAP. 79.**

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| <p><b>SECT. 3.</b> Choice of directors. Manner of voting.</p> <p>4. Filling vacancies of directors.</p> <p>5. Who shall be eligible. Quorum.</p> <p>6. Secretary, and other officers.</p> <p>7. Manner of calling meetings.</p> <p>8. Capital to be at least, \$100,000.</p> <p>9. Stockholders liable in certain cases.</p> <p>10. Capital, how invested.</p> <p>11. Loans on respondentia or bottomry.</p> <p>12. What property may be insured.</p> <p>13. Limitation of amount of single risks.</p> <p>14. Policies, how executed.</p> <p>15. Insurance companies not to engage in trade.</p> <p>16. Dividends, when and how made.</p> <p>17. Loss of capital to be repaired.</p> <p>18. Triennial and other statements of profits.</p> | <p><b>SECT. 19.</b> Not to insure, after loss of whole capital.</p> <p>20. Annual statements to be published.</p> <p>21. Legislature may examine the company affairs.</p> <p>22. Certain provisions, not applicable to mutual insurance companies.</p> <p>23. Insurance by mutual insurance companies.</p> <p>24. Certain regulations to be set forth in the policies.</p> <p>25. All persons insured, to be members.</p> <p>26. Premium notes, and assessments thereon.</p> <p>27. No liability beyond the amount of the note.</p> <p>28. Liens on real estate.</p> <p>29. Remedy, if assessment be not paid.</p> <p>30. Agents for foreign companies, to file certain copies with register of deeds.</p> <p>31. Penalty for neglect.</p> |
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How far subject to the provisions of this chapter.

**SECTION 1.** All insurance companies, now or hereafter incorporated in this state, may exercise the powers, and shall be subject to the duties and liabilities, contained in this chapter, and in chapter, seventy six, respecting corporations, as far as consistent with the provisions of their respective charters.

President and directors.

**SECT. 2.** The business of every such company shall be managed by seven directors, who shall choose one of their number to be president; they shall hold their offices one year, and until others are chosen and accept in their stead; and they shall be stockholders in said company and citizens of this state, but not directors of any other insurance company.

Choice of directors. Manner of voting.

**SECT. 3.** The directors shall be chosen by the stockholders, at such time and place and in such manner, as the by laws of the company may prescribe, by the majority of ballots; one vote in this and any other business of the company being allowed to each share, but no one stockholder to be allowed more than ten votes. In all cases, absent stockholders may act by proxy, authorized in writing.

Vacancies of directors.

**SECT. 4.** Vacancies in the board of directors may be filled at any meeting, specially called for the purpose.

Who shall be eligible. Quorum.

**SECT. 5.** No person shall be eligible as a director, who, at the time, shall be a director of any other insurance company. Four directors shall constitute a quorum for doing business.

Secretary and other officers.

**SECT. 6.** Every such company, or the directors thereof, as often as once a year, shall, by ballot, elect a secretary, who shall be the clerk of the company, and shall be sworn to the faithful discharge of his duty: besides other duties, required by the by laws of the company, he shall keep a true record of all the votes of the stockholders and of the directors, and a true list of the stockholders, and of the number of shares held by each, and shall record every transfer of shares, in a book kept for the purpose. The directors may appoint such other officers, as they may think necessary.

**SECT. 7.** The secretary shall call special meetings of such company, besides any meeting for which the by laws may provide, to be holden, at such time and place, and for such purposes, as may be in writing required by the proprietors of one fifth of the capital stock; if the by laws of such company prescribe no mode of calling such meeting, it may be notified in the same manner, as may have been prescribed in the act of incorporation for calling the first meeting.

**CHAP. 79.**  
Manner of calling meetings.  
1821, 139, § 9.

**SECT. 8.** No insurance company shall be incorporated in this state, with a capital of less than one hundred thousand dollars, to be paid in, at such periods and in such proportions, as may be required by the charter for the same.

Capital to be, at least, \$100,000.  
1821, 139, § 7.

**SECT. 9.** If any such company become insolvent, before its whole capital shall have been paid in, by the stockholders, any creditor thereof may have his action on the case against any one or more of the stockholders, whose proportion of the whole stock, allowed by the charter, shall not have been paid in, to recover against them in their individual capacity toward his debt, an amount, not exceeding the sum due from them on their respective shares.

Stockholders liable, in certain cases.  
1821, 139, § 2, 7.

**SECT. 10.** The capital stock of said companies, paid at each instalment, shall, within six months thereafter, except as provided in the next section, be invested either in the funded debt of the United States, or of this state, or in the stock of some bank legally incorporated, or authorized to transact its business in this state, in either or all of them, as may be most for the interest of said companies, respectively; or any amount, not exceeding two thirds of the capital, may be loaned to persons, resident in this state, on mortgages of real estate situated therein, or on pledge of any of the funded debts or stocks above mentioned.

Capital, how invested.  
1821, 139, § 3.

**SECT. 11.** Any such company may loan to citizens of this state any portion, not exceeding one half of its capital stock, on respondentia or bottomry; but not unless at least three fourths of all the directors shall agree to such loan, and enter their consent thereto, at large, on the records of the corporation, to be laid before the stockholders at their next meeting.

Loans on respondentia or bottomry.  
1821, 139, § 3.

**SECT. 12.** Every such insurance company may make insurance upon vessels, freight, money, goods and effects, and against captivity of persons, and on the life of any person during his absence at sea, and on money lent upon bottomry and respondentia; and they may also make insurance against fire on any dwelling houses or other buildings, and on merchandise or other property within the United States; and fix the premiums and terms of payment.

What property may be insured.  
1821, 139, § 1, 8.

**SECT. 13.** The risk incurred by any such company, by virtue of any of the provisions of the two preceding sections, shall not, at any one time, exceed ten per cent. of its capital, actually paid in, on any one bottom, or on any one building with its contents.

Limitation of amount of risks.  
1821, 139, § 5, 8.

**SECT. 14.** All policies of insurance, made by such companies, shall be subscribed by the president, or in case of his death, inability or absence, by any two of the directors, and countersigned by the secretary of the company; and they shall be binding upon the company, in like manner, as if executed under the corporate seal thereof.

Policies, how executed.  
1821, 139, § 1.  
8 Pick. 56.

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Insurance companies not to engage in trade.  
1821, 139, § 3.

Dividends, when and how made.  
1821, 139, § 2.

Loss of capital to be repaired.  
1821, 139, § 2.

Triennial and other statements of profits.  
1821, 139, § 2.

Not to insure, after loss of whole capital.  
1821, 139, § 4.

Annual statements to be published.  
1821, 139, § 5

Legislature may examine the company affairs.  
1821, 139, § 6.

Certain provisions, not applicable to mutual insurance companies.

Insurance, by mutual insurance companies.  
Special laws, 1828, 509, § 9

Certain regula-

**SECT. 15.** The said companies shall not, directly or indirectly, deal or trade in buying or selling any goods, wares or merchandise, or commodities whatever.

**SECT. 16.** The directors of every such company, at such times as their charter, or by laws, shall prescribe, shall make dividends of so much of the profits of the company, as to them shall appear advisable; but moneys received, and notes taken, for premiums on risks, which shall be undetermined at the time of making such dividends, shall not be deemed part of said profits.

**SECT. 17.** After any diminution of the capital stock of any such company shall have happened by losses, by depreciation or otherwise, no dividend shall be made, until such diminution shall have been supplied by actual funds, or the value restored.

**SECT. 18.** Once in every three years, and oftener, if required by the stockholders, the directors shall lay before them, at a meeting, an exact and particular statement of their profits, if any, after deducting losses and dividends.

**SECT. 19.** If any such company shall have sustained losses to an amount, equal to their capital stock, and the president or directors, after knowing the same, shall make any new or further insurance, the estates of such of them, as shall make such insurance, or consent thereto, shall be jointly and severally liable for the amount of any loss, which shall take place under such insurance.

**SECT. 20.** The president and directors of every such company shall, previously to subscribing any policy, and once in every year afterwards, publish, in two newspapers printed in this state, one of which shall be in the city of Portland, the amount of their stock, exclusive of premiums on risks not determined, the risks against which they insure, and the largest sum, they will take on any one risk.

**SECT. 21.** The president and directors, whenever required by the legislature, shall also lay before them a statement of the affairs of the company, and submit to an examination on oath concerning the same.

**SECT. 22.** The provisions in the foregoing sections of this chapter, relating to the amount of capital stock, to be owned by any insurance company, and the division of the same into shares, and dividends of profits thereon, and other provisions incidental to the nature of its funds, and such of said provisions as relate to the liability of directors or stockholders, in case of deficiency of capital, and the regulations concerning the business of any such company, contained in sections, eleven and twelve, of this chapter, shall not be construed as applicable to mutual fire insurance companies; but the following provisions shall be binding on such companies, so far as consistent with their respective charters.

**SECT. 23.** Mutual insurance companies, incorporated in this state, may make insurance for a term, not exceeding seven years, on dwelling houses, stores, shops and other buildings, and on household furniture, merchandise and other property, the contents of any building within this state, against loss or damage by fire, originating in any cause, other than by design in the assured.

**SECT. 24.** No by law, rule or requirement, made by any such

mutual insurance company, shall be binding on any person insured, to vacate his policy, issued or renewed subsequently to April twenty second, eighteen hundred and thirty eight, unless the same shall be distinctly set forth in such policy or renewal.

**SECT. 25.** Every person insured by such company, or his legal representatives or assigns, continuing to be insured therein, shall be deemed a member of the corporation, during the term specified in his policy and no longer.

**SECT. 26.** Every person, on being insured by such company, shall, before receiving his policy, deposit his promissory note, for such sum of money, as shall be determined by the directors; and such part of said note, as the by laws may require, shall be immediately paid towards the incidental expenses of the institution, and indorsed upon said note; and the remainder of said note shall be payable, in part or the whole, in such instalments as the directors may, from time to time, require, for the payment of losses and other expenses; to be assessed on all, who are members, at the time when such losses or expenses happen, in proportion to the amounts of their respective notes.

**SECT. 27.** No member of such company shall be held to contribute to any losses or expenses, beyond the amount of his said note, on which he is to be so assessed. At the expiration of any person's term of insurance, his note, or such part thereof as shall remain uncalled for as aforesaid, shall be relinquished to him, except as provided in the next section.

**SECT. 28.** The company shall have a lien against the assured, on buildings insured by them, and the land appurtenant to the same, for the amount at any time due on said note, to commence from the time of the recording of the same, as herein after provided, and continue until sixty days after the expiration of the policy, on which such note shall be given; provided, the said company shall cause a certificate of their claim to such lien, signed by their secretary, to be recorded by the register of deeds for the county or district; and, during the pendency of such lien, an attachment of such property, made in a suit to be commenced on said note in favor of the company, shall have priority to all other attachments or other claims; and execution, when recovered, may be levied on the same accordingly.

**SECT. 29.** If an assessment, made as provided in the twenty sixth section of this chapter, shall remain unpaid, for thirty days after demand made by any agent of the company or [on] any person liable to pay the note aforesaid, the directors may sue for and collect the whole of any balance due on such note; and the amount collected shall remain in the treasury of the company, subject to the payment of such sums, as might otherwise have been assessed on the note; and the overplus, at the expiration of the policy, shall be the property of the assured.

**SECT. 30.** Every person, who shall undertake to make insurance in this state, as the agent for, or in behalf of, any corporation established in any other state or country, shall deposit with the register of deeds within the county or district where he resides, or usually transacts the business of his agency, a copy of the charter of such

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tions to be set forth in policies. 1838, 337, § 1.

All persons insured, to be members. Special laws, 1828, 509, § 2.

Premium notes, and assessments thereon. Special laws, 1828, 509, § 5.

No liability beyond the amount of the note. Special laws, 1828, 509, § 5, 6.

Lien on real estate. Special laws, 1828, 509, § 6.

Remedy, if assessment be not paid. Special laws, 1828, 509, § 8.

Agents of foreign companies to file certain copies with register of deeds. 1828, 402, § 1.

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Penalty for neglect.  
1823, 402, § 1.

**SECT. 31.** If any person shall make, or renew, any policy of insurance with any person in this state, contrary to the provisions of the foregoing section, he shall forfeit, for every such offence, three hundred dollars, to be recovered in an action of debt; one half to him who may sue therefor, and the other half to the state.

## CHAPTER 80.

### OF TURNPIKE CORPORATIONS, AND TOLL BRIDGES.

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| <p><b>SECT. 1.</b> Viewing committee, on application for a turnpike.</p> <p><b>2.</b> Turnpike to be located by the county commissioners.</p> <p><b>3.</b> To be completed within three years.</p> <p><b>4.</b> First meeting, how called. Officers and proceedings.</p> <p><b>5.</b> Estimation and payment of damages.</p> <p><b>6.</b> Corporation may purchase the land.</p> <p><b>7.</b> Width of road.</p> <p><b>8.</b> Damages to be paid, before road is opened.</p> <p><b>9.</b> How made, when crossing a highway.</p> <p><b>10.</b> Tolls, when and where demanded.</p> <p><b>11.</b> Commutation of tolls.</p> <p><b>12.</b> Deduction on broad rimmed wheels.</p> <p><b>13.</b> Sign boards, with rates of toll.</p> <p><b>14, 15.</b> Exemptions from toll in certain cases.</p> <p><b>16.</b> Persons exempted, to inform the toll gatherer.</p> <p><b>17.</b> Restrictions on weight of teams, and droves of cattle and horses.</p> <p><b>18.</b> Penalty, for delaying passengers.</p> <p><b>19.</b> Only two persons and children to pass in wagons, toll free.</p> <p><b>20.</b> Penalty, for turning out to avoid paying toll.</p> | <p><b>SECT. 21.</b> Penalty, for demanding illegal toll.</p> <p><b>22.</b> Liability, for defects in roads or bridges.</p> <p><b>23.</b> Width of felloes of loaded wheels.</p> <p><b>24.</b> Certain teamsters to tell the weight of their load.</p> <p><b>25.</b> Teamsters not to lock their wheels without a shoe.</p> <p><b>26.</b> Penalty, for making a road to avoid a turnpike gate.</p> <p><b>27.</b> Measures to be taken for removal of gates.</p> <p><b>28.</b> Proceedings, if turnpike be out of repair.</p> <p><b>29.</b> Transfer of shares.</p> <p><b>30.</b> Sale of shares, to pay assessments.</p> <p><b>31.</b> Advertisement of sale.</p> <p><b>32.</b> On discontinuance of turnpike, land to revert.</p> <p><b>33.</b> Accounts to be rendered to the secretary of state. Books may be inspected by the legislature.</p> <p><b>34.</b> When the legislature may dissolve the corporation.</p> <p><b>35.</b> Penalty, for injuring toll gates, or attempting to pass without paying toll.</p> <p><b>36.</b> Certain charters not affected by this chapter.</p> <p><b>37.</b> Covered toll bridges to be lighted.</p> <p><b>38.</b> Penalty, for neglect.</p> |
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Viewing committee, on application for a turnpike.  
1821, 138, § 1.

**SECTION 1.** Whenever any application shall be made for a turnpike road, a committee shall first be appointed by the legislature, to view, at the expense of the petitioners, the route proposed by them; and the committee shall, before they proceed to view any proposed road, give public notice of the time and place of their meeting, by publishing the same in some newspaper printed in the county, in which the road is proposed to be made; and if no newspaper is there printed, the said notice shall be given in such manner, as the committee shall think, will cause the same to be generally known

to all persons interested; and they shall further give notice, in writing, to one or more of the selectmen of each town, through which they propose to view, and of the time, when they shall make their report to the legislature.

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SECT. 2. Whenever any grant is made for a turnpike road, and application is made to the county commissioners in the county, in which such road is situated, the said commissioners shall exercise the powers, and perform the duties, provided by law in the laying out of highways.

Turnpike to be located by the county commissioners.

SECT. 3. If any turnpike corporation shall neglect to complete their road, within three years from the date of their act of incorporation, the same shall be void.

To be completed within three years.  
1821, 138, § 22.

SECT. 4. The first meeting of any turnpike corporation, hereafter established, shall be held at such time and place, as shall be agreed on by a major part of the persons, to whom the grant of a charter is made, for the purpose of choosing a clerk, who shall be duly sworn, and such other officers as may be agreed on by such corporation; and at that, or any subsequent meeting, said corporation may make reasonable by laws, not repugnant to the constitution and laws of the state, for the well ordering of their affairs. Said first meeting may be called by publishing notice thereof, by the persons appointing the time and place, in some newspaper printed near the route of the intended road, at least two weeks before said meeting.

First meeting, how called. Officers and proceedings.  
1821, 138, § 16.

SECT. 5. Every turnpike corporation shall pay all sums, that may be assessed according to law, for damages for laying out such turnpike road; saving always to either party, so far as respects the damages only, the right of trial by jury, unless a committee be mutually agreed upon, according to the provisions of chapter, twenty five, relating to the laying out of highways; and in such cases, the turnpike corporation shall incur the same liabilities, and have the same rights, as to costs, as counties in the laying out of county roads.

Estimation and payment of damages.  
1821, 138, § 2.

SECT. 6. Any turnpike corporation may purchase and hold the lands, over which they shall make their road.

Corporation may purchase the land.  
1821, 138, § 2.

SECT. 7. No turnpike road, hereafter granted, shall be less than four rods wide; and the traveled part thereof shall not be less than twenty four feet wide in any part.

Width of road.  
1821, 138, § 2.

SECT. 8. No turnpike corporation, hereafter established, without the consent of the owner of any land over which their road is to pass, shall throw open any fences or inclosures upon the same, or remove any buildings, or cut down any trees, thereon standing, or make such road, or in any way injure the property of such owner, until the damages, done by the passing of the road over such land, shall have been first duly ascertained and paid, or tendered to the person entitled to receive the same; or, if said owner cannot be found within the state, until the same shall have been deposited to his use with the clerk of the county commissioners; provided however, that the officers of such corporation, or its agents or servants may enter on any such land, for the purpose of surveying and laying out the roads, and not otherwise.

Damages to be paid, before road is opened.  
1821, 138, § 19.

SECT. 9. When any turnpike road, hereafter established, shall intersect any then existing highway or town way, the proprietors

How to be built, when crossing a highway.  
1821, 138, § 9.



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of such turnpike road shall so construct the same, that it shall be convenient for travelers, to pass from such way to such turnpike road.

Tolls, when and where demanded. 1821, 138, § 3, 4.

**SECT. 10.** All turnpike corporations, hereafter established, whenever their roads shall be sufficiently made and approved by the commissioners of the county, where said road is situated, may erect gates in such places, as said commissioners may direct, and demand and receive of each traveler or passenger, at each of said gates, the following rates of toll, viz: for each chariot, phaeton or other four wheel spring carriage drawn by two horses, twenty five cents; and, if drawn by more than two horses, two cents for each additional horse; for every wagon drawn by two horses, ten cents; and, if drawn by more than two, two cents for each additional horse; for every cart or wagon drawn by two oxen, ten cents, and, if by more than two, twelve and a half cents; if by more than four oxen or horses, two cents for each additional ox or horse; for every curricule, fifteen cents; for every chaise, chair, sulkey or other carriage for pleasure, drawn by one horse, twelve and a half cents each; for every cart, wagon or truck, drawn by one horse, six cents and a quarter; for every man and horse, four cents; for every sleigh or sled, drawn by two oxen or horses, eight cents; and, if drawn by more than two oxen or horses, one cent, for each ox or horse; for every sleigh or sled, drawn by one horse, four cents; for all horses, mules or neat cattle, led or driven, besides those in teams or carriages, one cent, each; for all sheep or swine at the rate of three cents, by the dozen: provided, that no turnpike gate, where full toll is to be taken, shall be erected within fifteen miles of any other turnpike gate, on the same road, unless expressly authorized by the legislature; nor shall any such gate be erected by said turnpike corporation on any county or town way, previously established.

Commutation of tolls. 1821, 138, § 4.

**SECT. 11.** Any turnpike corporation may commute the rates of toll with any person, by annually taking of him a certain sum, to be mutually agreed on.

Deduction on broad rimmed wheels. 1821, 138, § 4.

**SECT. 12.** Carts and wagons, having wheels, the felloes of which shall be six inches broad or more, shall be subject to pay only half the toll, which carts and wagons, otherwise constructed are liable to pay.

Sign boards, with rates of toll. 1821, 138, § 4. 3 Pick. 342.

**SECT. 13.** All turnpike corporations shall erect, and keep exposed to view, in some conspicuous place, at every gate, where the toll is collected, a sign board, with all the rates of toll fairly and legibly written or painted on a white ground, in black letters of a large size. If they neglect so to do, they shall not be entitled to receive toll at such [a] gate during such neglect.

Exemptions from toll in certain cases. 1821, 138, § 5. 4 Pick. 368.

**SECT. 14.** No toll shall be receivable at any turnpike gate from any foot passenger, nor from any person, riding to his place of public worship, or passing such gate in any mode on tary duty, nor from any elector going to, or returning from town meeting, for the choice of electors of president and vice ident, or for the choice of governor, senators or representatives in congress, or to the state legislature, nor from any person residing in the town where such gate may be placed, unless he is going to, or returning from, beyond the limits of said town, nor for any

going to or from any place, on the common and ordinary business of a family. CHAP. 80.

SECT. 15. The officers, soldiers and musicians of all military companies, together with their ordnance and equipage, on days of training or review, while under arms or in going to, or returning from their place of parade, and all persons going to or from any funeral, or to or from public worship, on the sabbath, may pass over, and upon any toll bridge or turnpike road, free of toll. Same subject.  
1821, 138, § 5.  
1836, 213.

SECT. 16. Every traveler claiming to pass any turnpike gate or toll bridge, free of toll, shall communicate to the toll gatherer, his name and place of abode, if required by him. Whoever shall refuse or omit so to do, or shall wilfully render a false answer, and thereby evade the payment of his legal toll, shall forfeit, to the use of the proprietors of such turnpike or bridge, the sum of ten dollars, to be recovered in an action of debt. Persons ex-  
empted, to in-  
form the toll  
gatherer.  
1821, 138, § 6.

SECT. 17. If any person, driving neat cattle or horses over any turnpike bridge, or over any toll bridge, which shall be more than fifty feet in length, from one abutment, pier or trussel part to another, shall, without the consent of the toll gatherer or agent of the corporation, owning such bridge, permit more than twenty neat cattle or horses to be on such bridge, at one and the same time; or if any person shall, without such consent, drive or transport over any such bridge, any loaded cart or wagon, or other carriage, the weight whereof shall exceed forty five hundred pounds, exclusive of the team and carriage, and shall thereby break down or injure such bridge; such person or the owner of such neat cattle, horses, cart, wagon, carriage or load shall not recover any damages for his own injury or loss against such corporation. Restrictions on  
weight of teams,  
and droves of  
cattle and hor-  
ses.  
1821, 138, § 14.

SECT. 18. If any turnpike or bridge corporation, or any agent thereof, shall unreasonably delay or hinder any person, driving any cart or wagon, sleigh or other carriage, from passing any turnpike gate or toll gate, such corporation shall forfeit and pay to such person, so delayed or hindered, not less than two dollars, nor more than twenty dollars; to be recovered by a special action on the case. Penalty for de-  
laying travelers.  
1821, 138, § 8.

SECT. 19. No more than two persons and children with them, not received for the purpose of evading the payment of toll, shall have a right to pass any toll bridge in any wagon free of the toll, payable by foot passengers, in addition to the toll due on such wagon. Only two per-  
sons and chil-  
dren, to pass in  
a wagon, toll  
free.

SECT. 20. If any person, with his horse, team or cattle, shall turn out of such road to pass any turnpike gate, with intent to avoid paying the toll, and again enter on said road, he shall forfeit and pay treble the toll, which would have been payable at such gate, to the use of the corporation; and recoverable in an action of trespass on the case. Penalty, for  
turning out, to  
avoid paying  
tolls.  
1821, 138, § 5.

SECT. 21. If any turnpike corporation, their toll gatherer, or any other person in their employ, shall demand or receive more toll than the rate, by law established, the said corporation shall forfeit a sum, not exceeding ten dollars, nor less than two dollars, for the use of the person of whom the same is demanded or received; recoverable in an action on the case. Penalty, for de-  
manding illegal  
toll.  
1821, 138, § 7.

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Liability, for defects in roads or bridges. 1821, 138, § 7. 4 Pick. 311.

SECT. 22. Every turnpike corporation shall be liable to be indicted, for defect of any of its bridges, or want of repair in its roads. If any person, liable to the payment of toll, shall sustain any injury of himself or property, from deficiency in want of repair in said bridge or road, said corporation shall be answerable to such person for the same in damages, in an action on the case.

Width of felloes of loaded wheels. 1821, 138, § 12.

SECT. 23. All loaded carts or wagons, passing on any turnpike road, and carrying more than forty five hundred pounds, shall be drawn on wheels having each a felloc, not less than three and a half inches wide. If any person shall pass on any turnpike road with a cart or wagon, loaded as aforesaid, and drawn on wheels having narrower felloes than aforesaid, he shall pay to the corporation, owning said road, three times the stated toll for such cart or wagon.

Certain teamsters to tell the weight of their load. 1821, 138, § 12.

SECT. 24. Every person, passing on any turnpike road, and driving or having the care of a loaded cart or wagon, with wheels, the felloes of which are less than three and a half inches wide, shall, upon the request of the toll gatherer, give a true account of the weight of the load, and also his name and place of abode; and, if he shall refuse so to do, or shall make any misrepresentation, with an intent to defraud the corporation, he shall forfeit, to the use of such corporation, ten dollars.

Teamsters not to lock their wheels without a shoe. 1821, 138, § 15.

SECT. 25. If any person driving, or having the care of, any loaded cart or wagon, passing on any turnpike road, shall lock, chain or fasten any of the wheels of such cart or wagon, without putting, under said wheel, a shoe, not less than six inches wide and twelve inches long, he shall, for such offence, forfeit, to the use of the corporation owning said road, not less than two dollars, nor more than twenty dollars.

Penalty, for making a road, to avoid a turnpike gate. 1821, 138, § 13.

SECT. 26. If any person shall open or make any road or passway, other than a county road duly located, leading from any turnpike road, and shall reunite said road or passway, with such turnpike road, or with any road connected with the same, for the purpose of avoiding, or aiding others to avoid, any gate on such turnpike road, he shall forfeit, to the use of the turnpike corporation, so intended to be injured, a sum, not less than two hundred dollars, nor more than one thousand dollars.

Measures to be taken for removal of gates. 1821, 138, § 17.

SECT. 27. The county commissioners in any county, where a turnpike gate, belonging to any corporation, is placed, on petition from such corporation or the directors thereof, stating the reasons therefor, may authorize the removal of such gate to any other place in the county, which they judge expedient. In such case, the commissioners shall give public notice of the time, place and object of their meeting, by advertising in such public newspaper, as they may think proper, ten days at least before the time appointed for such meeting; at which meeting they shall view the places, where the gate is placed, and to which it is intended to be removed, and all persons interested may be heard. The commissioners shall, thereupon, order their doings to be duly entered on their records at their next regular session; provided, that all expenses, attending any of the proceedings, shall be defrayed by the petitioners.

Proceedings, if turnpike be out of repair. 1821, 138, § 18.

SECT. 28. Whenever any turnpike road shall be suffered to be out of repair, the county commissioners, in the county where the

defective road is situate, may order the gates thereof to be set open; the said commissioners having, at least ten days previously, notified the clerk of the corporation, owning such turnpike road, of complaint having been made against said road, and appointing a time and place to hear the parties, on the subject of such complaint. If, on such hearing or view of the premises, they see sufficient cause to order the gates to be set open, they shall leave a copy of their order under their hands with the said clerk, and the said gates shall, thereupon, be set open; and no toll shall be there demanded, until the said commissioners shall otherwise order.

**SECT. 29.** All shares in turnpike corporations shall be personal estate, and transferable by deed, acknowledged before any justice of the peace, and recorded by the clerk of the corporation, in a book kept for that purpose.

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Transfer of shares. 1821, 138, § 10.

**SECT. 30.** When any proprietor of shares in any turnpike corporation, hereafter established, shall neglect or refuse to pay any tax or assessment, duly made, for sixty days after the time appointed for payment thereof, the treasurer of such corporation may sell, at public vendue, a sufficient number of the shares of such delinquent proprietor, to pay the said assessment and all necessary charges. Should any surplus remain, on the sale of any share, such surplus shall be paid by the treasurer to such delinquent proprietor, on demand.

Sale of shares, to pay assessments. 1821, 138, § 11.

**SECT. 31.** Before making sales of such shares, the treasurer shall give notice of the time and place appointed for the sale, and of the sums due on each share, by advertising the same, in the manner mentioned in chapter, one hundred and seventeen, as to sales on execution.

Advertisement of sale. 1821, 138, § 11.

**SECT. 32.** Whenever any turnpike road, in whole or in part, shall be discontinued, the land, over which such discontinued turnpike or part thereof was laid, shall revert in the persons, their heirs or assigns, who were owners thereof, at the time such land was taken or purchased for the purpose of making such turnpike; any conveyance of said land, by deed to said corporation, notwithstanding.

On discontinuance of turnpike, land to revert. 1821, 138, § 20.

**SECT. 33.** Every turnpike corporation, hereafter established, shall, within six months, from the time of erecting their gates, lodge, in the office of the secretary of state, an account of all the expenses thereof; and every such corporation, wherever established, shall, annually in the month of January, exhibit, to the governor and council, a true account of the income or dividends arising from their tolls, with their necessary annual disbursements. The books of all turnpike corporations shall, at all times, be subject to the inspection of the governor and council, and of the legislature.

Accounts to be rendered to the secretary of state. Books may be inspected by the legislature. 1821, 138, § 21.

**SECT. 34.** The legislature may dissolve any turnpike corporation, hereafter established, after the expiration of twenty years from the date of its charter; or sooner, if it shall appear to their satisfaction, that the income of the road of such corporation shall have compensated them; for all moneys they may have expended, in purchasing lands for such road, and in making, repairing and taking care of the same, together with six per cent. a year; and thereupon the property of said road shall be vested in the state, and be at the disposal of the legislature.

When the legislature may dissolve the corporation. 1821, 138, § 22.

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Penalty, for injuring toll gates, or attempting to pass without paying toll. 1821, 138, § 5. 1827, 357, § 1. 3 Pick. 342.

Certain characters not affected by this chapter.

Covered toll bridges to be lighted. 1839, 384, § 1.

Penalty, for neglect. 1839, 384, § 2.

**SECT. 35.** If any person shall maliciously break down, or otherwise destroy or injure, any toll gate or [on] any turnpike or toll bridge, or shall wilfully injure such turnpike or bridge; or, if any person, liable to pay toll at such turnpike or bridge, shall pass or attempt to pass the gate thereof, with the intent of avoiding the payment of the legal toll, the same being demanded, he shall forfeit and pay not less than five dollars, nor more than fifty dollars, to the use of the proprietors of such road or bridge; in addition to any actual damage, thereby occasioned to such road or bridge.

**SECT. 36.** None of the provisions of this chapter shall be construed, as enlarging, diminishing or altering the rights, powers, obligations or liabilities of any turnpike corporation, existing in this state on the fifteenth day of February, in the year, eighteen hundred and twenty one.

**SECT. 37.** Every bridge on any turnpike, and every toll bridge, if in whole or in part covered, shall be suitably lighted, with not less than one sufficient light for every seventy five feet, in length, of said bridge, which is covered, commencing within twenty minutes after sunset, and continuing until ten o'clock in each evening; except it be at certain seasons of the year, if any, when toll is not demanded on such bridge or turnpike.

**SECT. 38.** Every corporation, which shall neglect or refuse to comply with the provisions of the preceding section, shall forfeit, for each evening they shall so neglect or refuse, two dollars; to be recovered by an action of debt, brought in the county, where the bridge, or any part of it, is situated, to the use of the person who shall sue therefor. Such corporation shall also be liable, in a special action for damages, to any person injured by such neglect.

**CHAPTER 81.**

**OF RAIL ROADS.**

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| <p><b>SECT. 1.</b> Requisites, to petitions for rail roads.</p> <p><b>2.</b> Corporation may take and hold necessary lands.</p> <p><b>3.</b> Estimation and payment of damages.</p> <p><b>4.</b> Limitation of applications therefor.</p> <p><b>5.</b> Restriction on the right to take lands, without consent.</p> <p><b>6.</b> Security for payment of damages.</p> <p><b>7.</b> Damages on lands of minors and others.</p> <p><b>8.</b> Manner of crossing turnpike or other road.</p> <p><b>9.</b> Repair or amendment of such turnpike, or road.</p> <p><b>10.</b> Penalty, for neglect.</p> | <p><b>SECT. 11.</b> Limitation of actions, by turnpike corporations or towns in such cases.</p> <p><b>12.</b> Highway may be altered, to accommodate rail road, in certain cases.</p> <p><b>13.</b> County commissioners may decide, as to the manner of crossing turnpikes or roads.</p> <p><b>14.</b> Corporation to provide temporary ways, whilst building across roads.</p> <p><b>15.</b> Manner of crossing other rail roads or canals.</p> <p><b>16.</b> To keep in repair all bridges built by them.</p> <p><b>17.</b> Bell to be rung, at crossing ways.</p> <p><b>18.</b> Sign boards at crossings.</p> <p><b>19.</b> Gates, at crossings, in certain cases.</p> |
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SECT. 20. Penalty, for non compliance with the three preceding sections.  
 21. Corporations liable for misconduct of their agents.

SECT. 22, 23. Transfer of shares.  
 24. All rail road corporations subject to this chapter, unless otherwise provided.

SECTION 1. No petition for the establishment of any rail road corporation shall be acted upon, unless the same is accompanied and supported by the report of a skilful engineer, founded on actual examination of the route and by other evidence, showing the character of the soil, the manner in which it is proposed to construct such rail road, the general profile of the surface of the country through which it is proposed to be made, the feasibility of the route, and an estimate of the probable expense of constructing the same. The petition shall set forth the places of beginning and end of the proposed rail road, the distance between the same, the general course of said rail road, together with the names of the towns through which the same, on actual survey, may be found to pass.

Requisites to petitions for rail roads.

SECT. 2. Any rail road corporation may take and hold, under the provisions contained in this chapter, so much real estate, as may be necessary for the location, construction and convenient use of their road. Such corporation may also take, remove and use, for the construction and repair of such road and its appurtenances, any earth, gravel, stone, timber or other materials on or from the land so taken : provided, that the land so taken, otherwise than by consent of the owners, shall not exceed four rods in width, unless where greater width is necessary for excavation, or embankment, or procuring stone, gravel or other materials.

Corporation may take and hold necessary lands. 1836, 204, § 1.

SECT. 3. Such rail road corporation may purchase and use real estate, for a price to be agreed upon with the owner thereof; or the damages to be paid by such corporation for any real estate taken as aforesaid, when not agreed upon, shall be ascertained and determined by the county commissioners under the same conditions and limitations, as are by law provided, in case of damages by laying out highways. The land, so taken, shall be held, as lands taken and held for public highways.

Estimation and payment of damages. 1836, 204, § 1.

SECT. 4. No application to such commissioners to estimate said damages shall be sustained, unless made within three years from the time of taking such real estate.

Limitation of applications therefor. 1836, 204, § 1.

SECT. 5. No corporation shall take, as aforesaid, any meeting house, dwelling house, or public or private burying ground, without the consent of the owners.

Restriction on the right to take lands without consent. 1836, 204, § 1.

SECT. 6. When any application, for an estimate of damages, shall be made to the county commissioners, either by such corporation or the owner of real estate, taken as aforesaid, the commissioners, if requested by any such owner, shall require the said rail road corporation to give security to the satisfaction of said commissioners, for the payment of all such damages and costs, as shall be awarded and finally determined, by jury or otherwise, for the real estate so taken; and all the right or authority of said corporation, to enter upon or use said real estate, except for making surveys, shall be suspended until they shall give such security.

Security for payment of damages. 1836, 204, § 2.

SECT. 7. Whenever any rail road corporation shall take any real estate, as aforesaid, of any minor, insane person, or any married

Damages on lands of minors and others. 1836, 204, § 3.

**CHAP. 81.** woman, whose husband is under guardianship, the guardian of such minor or insane person, or such married woman, with the guardian of her husband, may agree and settle with said corporation, for all damages or claims by reason of the taking of such real estate, and may give valid releases and discharges therefor.

Manner of crossing turnpike or other road.  
1836, 204, § 4.

**SECT. 8.** Any rail road corporation may raise or lower any turnpike or other way, for the purpose of having their rail road pass over or under the same; and in such cases said corporation shall put said turnpike, or other way, as soon as may be, in as good repair and condition, as before such alteration; and they shall forthwith, on the completion of such alteration, give notice thereof in writing to the agent or clerk of the proprietors of such turnpike, or to one of the selectmen of the town, where such other way may be situated.

Repair or amendment of such turnpike or road.  
1836, 204, § 4.

**SECT. 9.** If said proprietors or said selectmen, respectively, require further alterations or amendments of such turnpike or other way, and give notice thereof, in writing, to the agent or clerk of such rail road corporation, and if the parties cannot agree respecting the same, either of the parties may apply to the county commissioners at their next regular meeting; who, after reasonable notice to the adverse party, shall make final determination, respecting such proposed alterations or amendments, and shall award costs in favor of the prevailing party.

Penalty, for neglect.  
1836, 204, § 4.

**SECT. 10.** If such rail road corporation shall, unnecessarily, neglect to make such alterations and amendments, thus determined upon by the commissioners, the said turnpike corporation, or the aggrieved town, shall be entitled to their damages to be recovered in an action on the case.

Limitation of actions, by turnpike corporations or towns, in such cases.  
1836, 204, § 4.

**SECT. 11.** No action shall be sustained against any rail road corporation, by the proprietors of any turnpike, or by any town, or by the owners of any private way, by reason of any obstruction, thereto occasioned by said rail road's crossing the same, unless brought within one year after the causing of such obstruction.

Highway may be altered to accommodate rail road in certain cases.  
1836, 204, § 5.

**SECT. 12.** If any rail road corporation shall be desirous of altering the course of any highway or town way, where it may be crossed by their rail road, for the purpose of facilitating the crossing of the same, they may alter the same accordingly, in such manner as the county commissioners for the county where such way is situated, may direct; provided, the said commissioners, after due notice to the selectmen of the town where such way is situated, shall be of opinion, that such alteration will not essentially injure said highway.

County commissioners may decide, as to the manner of crossing turnpikes or roads.  
1836, 204, § 5.

**SECT. 13.** If any rail road corporation, before commencing the work of raising or lowering any turnpike or other way, as aforesaid, or before completing the same, shall request the direction of the county commissioners as to the mode of raising or lowering the same, it shall be the duty of said commissioners, after due notice to the parties interested, to direct the mode of performing said work, and their decision shall be final.

Corporation to provide temporary ways, whilst building across roads.  
1836, 204, § 5.

**SECT. 14.** Every rail road corporation, whilst employed in raising or lowering any turnpike or other way, or making any other alteration, by means of which the same may be obstructed, shall

provide, and keep in good order, suitable temporary ways, to enable travelers to avoid or pass by such obstructions. CHAP. 81.

SECT. 15. Any rail road corporation may construct and carry their rail road across, over, or under any rail road or canal, when it may be necessary in the construction of the same; and, in such cases, said corporation shall so construct their rail road crossings, as not unnecessarily to impede the travel or transportation upon the rail road, or canal, so crossed. Said corporation shall be liable, in an action on the case, for the damages occasioned to any corporation or party injured, by reason of said crossing. Manner of crossing other rail roads or canals. 1836, 204, § 6.

SECT. 16. Every rail road corporation shall maintain and keep in repair all bridges, with their abutments, which such corporation shall construct, for the purpose of enabling their road to pass over or under any turnpike road, canal, highway or other way. Corporation shall support all bridges built by them.

SECT. 17. Every rail road corporation shall cause a bell, of at least thirty five pounds in weight, to be placed on each locomotive engine passing upon their road; and the said bell shall be rung, at the distance of at least eighty rods from the place where said road crosses any turnpike, highway or town way, upon the same level with the rail road; and shall be kept ringing, until the engine shall have crossed such turnpike or way. Bell to be rung at crossing ways. 1836, 204, § 7.

SECT. 18. Every rail road corporation shall cause boards to be placed, well supported by posts, or otherwise, and constantly maintained across each turnpike, highway or town way, where it is crossed by the rail road, upon the same level therewith; the said posts and boards to be of such height, as shall be easily seen by travelers without obstructing the travel; and on each side of said boards, the following inscription shall be printed in plain legible letters of at least the length of nine inches each, RAIL ROAD CROSSING. LOOK OUT FOR THE ENGINE WHILE THE BELL RINGS. Sign boards at crossings. 1836, 204, § 7.

SECT. 19. If the selectmen of any town, wherein any turnpike, highway or town way, so crossed by any rail road, is situated, shall be of opinion, it is necessary for public security, that gates should be erected across the rail road, and that an agent should be stationed to open and close said gates, whenever any engine passes, the said selectmen may, by a writing delivered to the clerk or a general agent of such corporation, request said corporation to erect such gates, and station an agent, as aforesaid; and, if said corporation shall neglect or refuse so to do, the said selectmen may apply to the county commissioners to decide upon the reasonableness of such request; and if said commissioners, after due notice and hearing the parties, shall decide, that the erection of such gates, and providing such agent, are necessary for the security of the public, said rail road corporation shall comply with said decision and pay the costs of the application; but if the commissioners shall be of the opinion, that the establishment of said gates and agent is not required, as aforesaid, the said selectmen shall be liable to pay all the costs of their application. Gates at crossings, in certain cases. 1836, 204, § 7.

SECT. 20. If any rail road corporation shall unreasonably neglect or refuse, to comply with the requisitions contained in the three preceding sections, they shall forfeit for every such neglect or refusal, to the use of the state, a sum, not exceeding five hundred Penalty for non compliance with the three preceding sections. 1836, 204, § 8.



**CHAP. 81.** dollars, to be recovered by indictment ; and, if any agent, stationed as aforesaid, shall neglect to open or close said gates, for the safe passing of the engine on the rail road, or the traveler on the turn-pike, high way or town way, he shall, for every such neglect, forfeit to the use of the state a sum, not exceeding fifty dollars, to be recovered as aforesaid.

Corporations liable for misconduct of their agents. 1836, 204, § 8.

**SECT. 21.** Every rail road corporation shall be liable for all damages sustained by any person, in consequence of any neglect of the provisions of the foregoing section, or of any other neglect of any of their agents, or by any mismanagement of their engines, in an action on the case, by the person sustaining such damages.

Transfer of shares. 1836, 204, § 9.

**SECT. 22.** The shares in the capital stock of any rail road corporation shall be deemed personal estate ; and they may be transferred by any conveyance in writing, recorded either by the treasurer, in books to be kept in his office, or by an officer duly authorized by the directors, in books to be kept at such other place, as they may appoint within the state. When recorded in any other place, they shall, within ten days thereafter, be also recorded in the said books kept by the treasurer. No conveyance of any such shares shall be valid, against any other persons than the grantors or their representatives, unless so recorded.

Same subject. 1836, 204, § 9.

**SECT. 23.** On making any such transfer, the certificates of the shares transferred shall be given up and canceled, and new certificates shall be issued to the purchasers, unless some attachment of such shares shall have been made previous to such transfer ; in which case, the issuing of said certificates shall be suspended, until said attachments shall be dissolved, or the shares sold by process of law.

All rail road corporations subject to this chapter, unless otherwise provided.

**SECT. 24.** All rail road companies, that have been, or shall be incorporated under the authority of this state, shall have all the powers and privileges, and be subject to all the duties, liabilities and other provisions contained in this chapter, respecting such corporations, unless inconsistent with the express provisions of their charters.

## CHAPTER 82.

### OF AGRICULTURAL AND HORTICULTURAL SOCIETIES.

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| <p><b>SECT. 1.</b> Annual payment from the state, to agricultural societies.</p> <p>2. Limitation of amount.</p> <p>3. Condition of such payment.</p> <p>4. Premiums to be offered by such societies.</p> | <p><b>SECT. 5.</b> Application of moneys, and annual account.</p> <p>6, 7. Requisites, on applications for premiums.</p> <p>8. Annual statement by the secretary of state.</p> <p>9. Legislative rights reserved.</p> |
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Annual payment from the state to agricultural societies. 1832, 24, § 1.

**SECTION 1.** The treasurer of the state is hereby authorized and directed to pay to the treasurer of any agricultural society, or any agricultural or horticultural society, whenever any such treasurer

shall apply for the same, a sum equal to that, which said society may have raised and actually received, by subscription or otherwise, within the next preceding year; all of which sums shall be appropriated to the purposes, specified in the charter of said society.

CHAP. 82.

SECT. 2. If there be three such societies in a county, the payment from the state treasury shall not exceed one hundred dollars to each of them; if two, and only two, one hundred and fifty dollars, to each of them; and, if there be only one such society, the payment thereto shall not exceed three hundred dollars.

Limitation of amount.  
1832, 24, § 1.

SECT. 3. None of the aforesaid payments shall be made, till the treasurer of such society shall file, with the state treasurer, a certificate on oath, therein specifying the amount raised and actually paid in, to said society.

Condition of such payment.  
1832, 24, § 1.

SECT. 4. Every society, availing itself of the benefit of this chapter, shall, at their discretion, annually and publicly, offer premiums for introducing or improving any breed of useful cattle or animals, or any tools or implements of husbandry or manufacture; introducing, raising or preserving any valuable trees, shrubs or plants; or, in any way, encouraging or advancing any of the branches or departments of agriculture, horticulture or manufactures: and no such society by their by laws shall confine such premiums to their own members, but shall bestow them on any person residing within the limits of such society, who shall produce the best specimens.

Premiums to be offered by such societies.  
1832, 24, § 2.

SECT. 5. Such society shall be held to apply to some or all of the purposes, mentioned in the preceding section, a sum, in each year, equal at least to that received from the state; and shall, annually in the month of January, transmit to the secretary of state an official statement of its expenditures, expressing the object for which premiums have been awarded, and to whom paid, accompanied by such general observations as may be deemed useful.

Application of moneys, and annual account.  
1832, 24, § 2.  
1833, 71.

SECT. 6. Any person to whom a premium shall be awarded, for raising the greatest crop on any given quantity of land, of at least one acre, if the crop be of corn or grain, shall, before receiving the premium, deliver to the society a statement in writing, specifying the kind and quantity of dressing put upon the land, the course pursued in cultivating the same, and the kind of soil cultivated, with such other circumstances as may be considered useful.

Requisites, on applications for premiums.  
1832, 24, § 3.

SECT. 7. If the premium be awarded for introducing or improving the breed of any cattle, horses or other animals, he shall, before receiving the same, make a similar statement of the breed or stock, and of the advantages thereof for labor, the dairy or fattening or any other purpose, together with the mode and expense of rearing or treating the same, as compared with the usual methods, and any other useful remarks.

Same subject.  
1832, 24, § 3.

SECT. 8. The secretary of state shall, annually on or before the first day of February, lay said official statements before the legislature, to be submitted to a committee on agriculture, who may publish extracts therefrom, and such essays, relative to the subject, as they may think adapted to the advancement of agriculture and horticulture; and the legislature may cause a suitable number of copies to be distributed.

Annual statement of the secretary of state.  
1832, 24, § 4.

SECT. 9. The powers and privileges, granted by this chapter,

Legislative rights reserved.  
1832, 24, § 5.

CHAP. 82. may be enlarged, restricted, or annulled, at the pleasure of the legislature.

## CHAPTER 83.

### OF AQUEDUCTS.

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| <p><b>SECT. 1.</b> Meetings of proprietors of aqueducts for incorporation, how called.</p> <p><b>2.</b> Declared a corporation.</p> <p><b>3.</b> Mode of calling meetings, and clerk.</p> <p><b>4.</b> Registry of shares and transfers.</p> <p><b>5.</b> Directors, and other officers.</p> <p><b>6.</b> Assessments, and collection thereof.</p> <p><b>7.</b> Penalties, for breach of by laws.</p> <p><b>8.</b> Manner of voting.</p> <p><b>9.</b> Transfer or attachment of shares.</p> | <p><b>SECT. 10.</b> Corporation may hold real estate.</p> <p><b>11.</b> May dig up highways or streets, by permission.</p> <p><b>12.</b> Penalty, for injuring an aqueduct.</p> <p><b>13.</b> Towns may draw water in case of fires.</p> <p><b>14.</b> Continuance of certain corporate powers, after dissolution.</p> <p><b>15.</b> Liability of corporators in such case.</p> <p><b>16.</b> Title to corporate property after dissolution.</p> |
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Meetings of proprietors of aqueducts for incorporation, how called. 1821, 140, § 1.

**SECTION 1.** Any persons, associated by agreement in writing, as proprietors, of an aqueduct for the purpose of conveying fresh water into or within any town, or, of any funds for establishing such aqueduct, may apply in writing to some justice of the peace, for the county in which the said aqueduct or any portion thereof may be situated, or is proposed to be made; stating, in such written application, the name and style of their association, and the objects of their proposed meeting; and requesting such justice to issue his warrant to some one of the persons applying, directing him to call such meeting; and such justice may thereupon issue his warrant accordingly, stating therein the time, place and object of such meeting; and the proprietor, to whom the warrant is directed, shall notify such meeting by posting up the substance of the said warrant, with his notice annexed thereto, seven days at least before the said meeting, in some public place in every town, in which the said aqueduct, or any portion thereof, may be, or is proposed to be made.

Declared a corporation. 1821, 140, § 2.

**SECT. 2.** The proprietors aforesaid, duly assembled in pursuance of such warrant, and their successors, shall be a corporation by the name and style, mentioned in their application.

Mode of calling meetings, and clerk. 1821, 140, § 2, 3.

**SECT. 3.** The said proprietors may, at any legal meeting, agree upon the method of calling future meetings of the corporation; and they may choose a clerk, who shall be duly sworn, and shall fairly and truly record, in books to be provided and kept by him for that purpose, all by laws, votes and other proceedings of such corporation, which books shall, at all times, be subject to the inspection of any person, appointed for that purpose by the legislature.

Registry of shares and transfers. 1821, 140, § 8.

**SECT. 4.** At or immediately after the first meeting, the clerk shall enter, in the books aforesaid, the names of the several proprietors, and the shares owned by each of them; and when any share shall afterwards be transferred, the transfer shall be entered by said

clerk in said books, within three months after it shall have been made, in such form and for such fees as the directors shall order; and no person shall be deemed a proprietor, whose share or interest shall not be so entered.

CHAP. 83.

SECT. 5. The proprietors may choose any number of directors and other officers, to manage the business of said corporation; and the directors shall choose one of their number, to be president of the corporation.

Directors and other officers. 1821, 140, § 3.

SECT. 6. The directors may make such assessments on the proprietors of the shares in such aqueduct or funds, as they shall find necessary; and on the default of any proprietor, to pay such assessment, for thirty days after notice thereof, they may sell, by public auction, so many of his shares as will be sufficient to pay the same, with necessary charges; the sale of such shares, being first advertised in some newspaper, printed in the county, three weeks successively, or notifications thereof being posted up, twenty days at least before the sale, in some public places in each of the towns, wherein such aqueduct may be or is proposed to be made; and the surplus moneys, if any there be, arising from such sale, shall be paid to the owner of the shares so sold.

Assessments, and collection thereof. 1821, 140, § 3.

SECT. 7. Such corporation may impose penalties for the breach of any of their reasonable by laws, not exceeding thirty dollars for each offence.

Penalties, for breach of by laws. 1821, 140, § 5.

SECT. 8. At any meeting, the proprietors shall be entitled to one vote, for each share by them respectively held, and may vote by proxy authorized in writing.

Manner of voting. 1821, 140, § 4.

SECT. 9. The shares in said companies, whilst they shall exist as corporations, shall be deemed personal estate, and transferable and subject to attachment on mesne process, and sale on execution, for the debts of the proprietors thereof, like shares in other corporations.

Transfer or attachment of shares. 1821, 140, § 6, 9.

SECT. 10. Every such corporation may purchase and hold any real estate, necessary for the purpose of their association, not exceeding thirty thousand dollars in value.

Corporation may hold real estate. 1821, 140, § 6.

SECT. 11. Any such corporation may, with the written consent of the selectmen of the town, dig up and open any street or way, for the purpose of placing such pipes, as may be necessary in constructing such aqueduct, or for repairing or extending the same; provided the same be done in such manner, as not to prevent the convenient passing of teams and carriages.

May dig up highways or streets, by permission. 1821, 140, § 7.

SECT. 12. If any person shall maliciously injure any such aqueduct, or any of its appurtenances, he shall forfeit a sum, not exceeding twenty dollars, to the use of the town, to be recovered by indictment; and he shall also be liable in a civil action, brought by the corporation, to pay treble the amount of the damages sustained thereby.

Penalty for injuring an aqueduct. 1821, 140, § 10.

SECT. 13. Any town in which such aqueduct is placed, may put conductors into the pipes thereof, for the purpose of drawing therefrom, free of expense, as much water as may be necessary, when any building shall be on fire in such town; provided that such conductors shall be so secured, that water shall not be drawn therefrom, unless for the purpose of extinguishing fires.

Towns may draw water, in case of fires. 1821, 140, § 11.

**CHAP. 83.**  
Continuance of certain corporate powers, after dissolution. 1821, 140, § 9.

**SECT. 14.** All contracts, made by or with such corporation, shall, after its dissolution, remain in force, and the last shareholders shall have a corporate capacity, until all contracts and agreements made by or with the corporation before its dissolution, shall be performed; and such shareholders shall continue liable and capable, in and by the same name as before such dissolution, to sue and be sued, and may prosecute and defend in all suits, respecting such contracts and agreements; provided, that every such suit shall be commenced within six years after such dissolution, or within the like time after the right of action shall have accrued.

Liability of corporations, in such case. 1821, 140, § 9.

**SECT. 15.** If no corporate property can be found to satisfy any judgment, which may be recovered against said shareholders, after such dissolution, and the judgment shall not be satisfied, within six months after the same shall have been recovered, the judgment creditor may satisfy the same out of the private estate of such shareholders, or any of them, as if the judgment had been against them in their private capacity.

Title to corporate property, after dissolution. 1821, 140, § 9.

**SECT. 16.** If such corporation shall, at its dissolution, be seized of any estate, the several persons, who are proprietors, shall become tenants in common thereof, in proportion to the shares or interests, which they shall then respectively hold in the stock of the corporation.

**CHAPTER 84.**

**OF LIBRARIES AND THEIR PROPRIETORS.**

- SECT. 1. Incorporation of proprietors of social libraries.
- 2. Subsequent meetings, how called.
- 3. Right to hold property.
- 4. Officers, by laws, and proceedings.
- 5. Corporate name.

- SECT. 6. Military library societies.
- 7. Literary and scientific library associations.
- 8. County law library associations.
- 9, 10. Duties of treasurer and clerk thereof.

Incorporation of proprietors of social libraries. 1821, 141, § 1.

**SECTION 1.** Any seven or more persons capable of contracting, in any town or plantation, being proprietors in common of any library, may form themselves into a society or body politic, for the express purpose of holding, preserving, increasing and using such library; and any five of them may apply to a justice of the peace in the county, in which such town or plantation may be, in writing by them signed, to issue his warrant for calling a meeting of such proprietors, to be held at the time and place, and for the purposes stated in such application, who shall issue his warrant accordingly to some one of such proprietors; and it shall be the duty of such persons to notify the meeting by posting the purport of the warrant, in some public place in said town or plantation, or by giving personal notice to each of the proprietors, seven days or more before said meeting.

Subsequent meetings, how called. 1821, 141, § 1.

**SECT. 2.** At such meeting, the proprietors may agree on the mode of calling future meetings; each proprietor being entitled to give one vote.

**SECT. 3.** Such proprietors may hold real or personal estate, to the amount of five thousand dollars. **CHAP. 84.**

**SECT. 4.** Any seven or more proprietors may, at such meeting, choose a moderator, clerk, librarian, treasurer and such other officers, as may be necessary; and the clerk shall be sworn; and the treasurer shall give bond, with sufficient sureties, to said proprietors by their corporate name, faithfully to account for all moneys he may receive; and may also raise moneys, by vote and assessment on the several shares, as they may deem necessary or proper; and make by laws for the regulation of their concerns, not repugnant to the laws of the state, and annex penalties to their breach, not exceeding three dollars.

**SECT. 5.** Such proprietors, so incorporated, shall be called by the name of "the proprietors of the social library in the town (or plantation) of \_\_\_\_\_," and by that name may sue and be sued; and when there shall be more than one such library in said town or plantation, they shall be distinguished, by prefixing to the name, the word, "second," "third," according to the dates of incorporation.

**SECT. 6.** Any seven or more officers, in any division of militia, who shall in writing associate themselves, for the purpose of forming a military library society within the limits of the division, may become a body politic by that name, in the same manner as is prescribed in the first section of this chapter; except, that the notice shall be given, as aforesaid, in every town included in the division, twenty days before the meeting, or published in some newspaper printed within the limits of such division, for such time; and at such meeting, they may exercise all such powers, as are enumerated in the first section of this chapter.

**SECT. 7.** Any seven persons, who may have associated in writing, for the purpose of forming themselves into a society for holding, preserving and increasing a library of a literary and scientific character, for their use, or for any other literary or scientific purpose, may procure their incorporation, in like manner and with like powers, as are mentioned in the first section of this chapter, under any name and style, they may see fit to adopt.

**SECT. 8.** In every county, where five or more attorneys, admitted to practice in the district court, do or shall reside, it shall be lawful for any five of them, to procure themselves and the other attorneys, resident in the county, to be incorporated in the manner prescribed in the first section of this chapter, and the notification required, if posted up in some conspicuous part of the court house in such county, seven days previous to their meeting, shall be sufficient; and may take the name of "the trustees of the law library in the county of \_\_\_\_\_;" for the purpose of organizing the establishment of a law library in such county; and at such meeting which shall be held at some term of the district court in such county, they may choose a clerk, librarian, and treasurer, who shall all be sworn to the faithful discharge of their duty, and hold their offices during the pleasure of the corporation; and make all lawful regulations necessary; at which meetings the oldest member present, of the bar of the county, shall preside.

Right to hold property.  
1821, 141, § 1.  
Officers, by laws, and proceedings.  
1821, 141, § 2.

Corporate name.  
1821, 141, § 3.

Military library societies.  
1821, 141, § 4.

Literary and scientific library associations.  
1830, 460, § 1.

County law library associations.  
1821, 141, § 5.

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Duties of treasurer and clerk thereof.  
1822, 192, § 3.

**SECT. 9.** The treasurer of each library association, under the direction of the said trustees, shall apply all moneys received of the county treasurer, with all bequests and donations, to form a law library, under the appointed regulations; and the clerk shall keep an exact record of all the proceedings of the association.

Same subject.  
1822, 192, § 3.

**SECT. 10.** The treasurer shall keep an exact account of all moneys, donations and bequests, belonging to such association, which he shall, annually, settle with the association on oath, in such manner as shall be prescribed; and the said treasurer, librarian and the clerk shall be answerable for all misfeasance, in an action by the association. The treasurer shall, annually in January, and before the second Wednesday, deposit in the office of the state treasurer a statement of the funds received, the year preceding, by such association.

**CHAPTER 85.**

**OF MANAGEMENT OF LANDS, WHARVES, AND OTHER REAL ESTATE, LYING IN COMMON.**

- SECT. 1.** Warrant for calling meetings.  
2. To whom directed.  
3, 4, 5. Modes of giving notice.  
6. Officers, and manner of calling future meetings.  
7. Officers to be sworn.  
8. Proceedings at meetings, and by laws.  
9. How votes are to be counted.  
10. No business to be transacted, unless specified in the warrant.  
11. Prosecution and defence of actions.

- SECT. 12.** Raising and assessment of moneys.  
13. Publication of assessment.  
14. Payment enforced by sale.  
15. Right of redemption.  
16. Treasurer's power and duties.  
17. Management of property. Proxies.  
18. Proprietors' records, how preserved.  
19. Certain corporate powers continued, after final division.

Warrant for calling meetings of proprietors of common lands.  
1821, 43, § 1.

**SECTION 1.** When any five, or a major part of the proprietors of lands lying in common are desirous of a meeting of the proprietors, and shall apply to a justice of the peace throughout the state, or a justice of the peace for the county, in which the lands lie, he may issue his warrant for calling such meeting, at the time and place and for the purposes, distinctly stated in such application, which shall be in writing, and signed by such applicants or their agents.

To whom directed.  
1821, 43, § 1.

**SECT. 2.** Such warrant may be directed to one of the proprietors, requiring him to notify said proprietors, of the time and place of the intended meeting, and the purposes of it.

Mode of giving notice.  
1821, 43, § 1.

**SECT. 3.** If the lands lie in one or more incorporated towns, a notice in writing shall be posted up in some public place within each town, in which any of said lands lie, and published in the newspaper published by the printer to the state, and in one of the newspapers printed in the county, where the lands or any part thereof lie, fourteen days before such meeting.

- SECT. 4.** If such lands do not lie in any incorporated town, such notice shall be published in the newspaper, published by the printer to the state; and in one other newspaper, if such there be, in the county, where such lands or any part thereof lies, four weeks, successively, next before such meeting. **CHAP. 85.**  
Same subject. 1821, 43, § 1.
- SECT. 5.** Such meeting may be warned, by posting up written notifications in some public place, in each and every town and plantation, where any one of said proprietors may reside, fourteen days before the time appointed for the meeting. Same subject. 1821, 43, § 1.
- SECT. 6.** At such meeting, so many as assemble in person, or by attorney, may choose a moderator, a clerk, a treasurer, assessors, collector or collectors of taxes, committees and all other needful officers; and by vote decide upon the manner, in which future meetings may be called and notified. Officers, and manner of calling future meetings. 1821, 43, § 1.
- SECT. 7.** Such clerk shall be duly sworn, and record all votes passed at all meetings; and the treasurer, assessors and collectors shall be also duly sworn by the moderator or a justice of the peace. Officers to be sworn. 1821, 43, § 1, 5.
- SECT. 8.** The proprietors may pass votes, as to the management, improvement, division and disposition of said lands or wharves, and annex penalties to the breach of them, not exceeding three dollars for one offence; provided, such orders or by laws shall be approved by the county commissioners of the county, where the lands may lie; and the penalties shall be disposed of, as said proprietors may direct. Proceedings at meetings, and by laws. 1821, 43, § 1.
- SECT. 9.** At all meetings of said proprietors, the votes shall be collected and counted according to the interest, which each proprietor has in the common lands, where the same is known. How votes are to be counted. 1821, 43, § 1.
- SECT. 10.** No business shall be acted upon at any meeting, except it be distinctly expressed in the warrant for such meeting; and the moderator shall cause all doubtful votes to be made certain, numbering according to the interest of each proprietor. No business to be transacted, unless specified in the warrant. 1821, 43, § 1, 2.
- SECT. 11.** Said proprietors may prosecute and defend any suits, by their agent duly appointed, and the certificate of the proprietor's clerk shall be evidence of such agency. Prosecution and defence of actions. 1821, 43, § 3.
- SECT. 12.** At any legal meeting, said proprietors may vote, or order the raising of, any money for bringing forward, completing the settlement of, or managing or improving said lands, or which shall be for the common good of the proprietors; and apportion such sum or sums, so raised, upon the several rights of the proprietors, according to their several interests therein. Raising and assessment of moneys. 1821, 43, § 4.
- SECT. 13.** The treasurer, collector or committee of the proprietors shall publish the apportionment of the sum, thus raised upon the several proprietors, in the same manner in which a meeting of the proprietors is to be notified, according to the provisions of this chapter. Publication of assessment. 1821, 43, § 4.
- SECT. 14.** If any proprietor shall neglect to pay, to the treasurer, collector or committee, his proportion of the money raised, for the term of six months, if he resides in the state, or the term of twelve months, if he resides without the state, then the committee of the proprietors may, from time to time, sell at public auction so much of each delinquent's proportion or right, of and in the common lands, as will be sufficient to satisfy and pay his tax and the Payment enforced by sale. 1821, 43, § 4.  
4 Greenl. 237.  
5 Greenl. 345.  
7 Greenl. 404.



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reasonable charges of sale; after notice of such intended sale, posted up in the manner before mentioned, and published in two of the newspapers before named, five weeks successively next before the time of sale: and said committee may give deeds of the land sold to the purchaser, to hold in fee simple.

Right of redemption. 1821, 43, § 4.

**SECT. 15.** The proprietor of the right or proportion, so sold, may redeem the same, at any time within twelve months, by paying to such committee the sum for which the same was sold, with twelve dollars for each one hundred dollars produced by such sale, and in that proportion for a less or greater sum.

Treasurer's power, and duties. 1821, 43, § 5.

**SECT. 16.** The treasurer may sue for and collect all debts, due to the proprietors, and shall render his account of all moneys, received and paid; and hold his office during the pleasure of the proprietors.

Management of property. Proxies. 1821, 43, § 6. 3 Pick. 396.

**SECT. 17.** The proprietors of such lands, by a majority of those present at any legal meeting, may order, manage, improve, divide or dispose of the same, as they may decide upon; and any proprietor may vote in person, or by attorney appointed in writing.

Proprietors' records, how preserved. 1821, 43, § 8, 9.

**SECT. 18.** After a final division of the common property of the proprietors, they shall cause their records to be deposited in the office of the clerk of the town, in which such lands or a part of them may lie; and such town clerk may record votes and certify copies of such records, in like manner as the proprietors' clerk might have done; and the last clerk chosen shall continue in office, till the records are so deposited.

Certain corporate powers continued, after final division. 1821, 43, § 7.

**SECT. 19.** Such a final division shall not dissolve the corporation, till the end of ten years thereafter; but the last proprietors in common and their heirs shall continue in their corporate capacity, and retain their corporate powers for collecting all debts due to the corporation, and remain liable to pay all debts due therefrom; and may call and hold meetings, vote and raise assessments for payment of their debts, and all other charges necessary for closing their business.

**CHAPTER 86.**

**OF MILLS AND THEIR REPAIRS.**

- SECT. 1, 2.** Manner of calling a meeting of mill owners.
- 3.** Owners of a moiety or more, may repair or rebuild.
- 4.** How to be reimbursed.
- 5.** Special contracts not affected.

- SECT. 6.** Proceedings, if a part owner be minor, and in certain other cases.
- 7.** Owners of grist mills, to furnish scales for weighing grain.
- 8.** Toll established.

Manner of calling a meeting of mill owners. 1829, 437, § 1.

**SECTION 1.** When any owner of a mill, or of the dam necessary to the working thereof, is of opinion, that it is necessary the same should be rebuilt or repaired, in whole or in part, on his written application to a justice of the peace in the county where such mill or dam is situate, to call a meeting of the owners, expressing the object, time and place of the meeting, such justice may issue

his warrant for the purpose, directed to such owner; which shall be published in some newspaper, if there be any printed in said county, three weeks successively, the last publication to be not less than ten nor more than thirty days before the meeting; or a true copy of such notification may be delivered to each of said owners, or left at his last and usual place of abode; either of which kinds of notice shall be binding on all the owners.

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SECT. 2. When such mill dam shall be situated, partly in one county and partly in an adjoining county, then such application for said meeting may be made to a justice of the peace in either of such counties.

Same subject.

SECT. 3. At such meeting, whether all the owners shall attend or not, the owners in interest of at least one half of such mill or dam, may rebuild or repair the mill or dam or both, so far as to make them serviceable; and shall be reimbursed and paid such sums, as they or any of them shall have advanced thereon, beyond their respective proportions, with interest for the same, in the mean time, out of said mill or the profits.

Owners of half or more may rebuild.  
1821, 45, § 13.  
4 Mass. 559.

SECT. 4. If such sums shall not be reimbursed by the profits of the mill, or paid by the persons neglecting or refusing to join in rebuilding or repairing the same, within six months after such work shall have been completed, the proprietors, who have advanced such sums may lawfully charge one per cent. a month, on the amount so advanced, from the end of six months, till the same shall be reimbursed or paid as aforesaid; and in case of the death of any delinquent owner, or any alienation of his interest in the premises, the advancing owners shall, notwithstanding, have a continuing lien upon his shares or title in said mill or dam, for the purpose of the reimbursement of the expenses of such rebuilding or repairing.

How to be reimbursed.  
1821, 45, § 13.

SECT. 5. Nothing, however, in the preceding section, shall be construed to impair or affect any special contract, made by the owners, respecting the building or repairing such mill or dam.

Special contracts, not affected.  
1821, 45, § 13.

SECT. 6. Where any part of such mill or dam shall be, at the time of meeting and notice, held and possessed by minors, married women, tenant by curtesy, in tail, for life or years, or by mortgager or mortgagee, the guardians of such minors, husband[s] of such married woman, in her right, and such tenant, or mortgager, or mortgagee, shall be deemed, for the purposes of this act, the proprietor or proprietors thereof, and shall be notified and vote, and contribute accordingly; and all advances, made by them respectively, on account of such minors, heirs of such married women, those in remainder or reversion, or the other party in the mortgage, if not paid, shall be recoverable, in a special action on the case, with interest.

Proceedings, if a part owner be a minor, and in certain other cases.  
1821, 45, § 14.

SECT. 7. The owner of every grist mill shall keep, in his mill, scales and weights to weigh corn, grain and meal, when required; and for neglecting to be so provided with them, or refusing to weigh corn, grain or meal, when required, or taking more than lawful toll, he shall forfeit five dollars, to be recovered, by action of debt, with costs, before any justice of the peace, for the county where the offence shall be committed.

Owners of grist mills, to furnish scales for weighing grain.  
1821, 45, § 15.

SECT. 8. The toll for grinding, cleansing and bolting all sorts of grain, shall not exceed one sixteenth part thereof.

Toll established  
1821, 45, § 16.  
1839, 365.

TITLE SIXTH.

Of domestic relations.

- CHAPTER 87. Of marriage, and its solemnization.
- 88. Of parents and children.
- 89. Of divorce, and dissolution of marriages.
- 90. Of masters, apprentices and servants.

CHAPTER 87.

OF MARRIAGE, AND ITS SOLEMNIZATION.

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| <p>SECT. 1, 2. Marriages prohibited, within certain degrees.</p> <p>3. Certain marriages void.</p> <p>4. Bigamy not allowed.</p> <p>5. Marriage in another state, in evasion of these provisions, void.</p> <p>6. Publication of intentions of marriage.</p> <p>7. Consent of parent or guardian of a person under age.</p> <p>8. Manner of publishing, where there is no town clerk.</p> <p>9. Proceedings, when banns are forbidden.</p> <p>10. Form of marriage among quakers, and certificate thereof.</p> <p>11. Justices may solemnize marriages.</p> <p>12. Also commissioned ministers.</p> <p>13. Tenure of office of such ministers.</p> <p>14. Penalty, for marrying persons, contrary to the foregoing provisions.</p> <p>15. Punishment, if unauthorized persons undertake to solemnize marriages.</p> <p>16. Record of marriages, and return thereof.</p> <p>17. Copies of such records, to be legal evidence.</p> <p>18. What marriages shall be valid.</p> <p>19. Penalty, for pulling down publications.</p> | <p>SECT. 20. Penalty, for false certificate of publication.</p> <p>21. Town clerk to make annual returns of marriages.</p> <p>22. Mode of authorizing a wife to contract, when deserted by her husband.</p> <p>23. Sale of her real estate in such case.</p> <p>24. She may be a party to suits.</p> <p>25. Payments due to her, in her own right.</p> <p>26. Mode of proceeding, in such cases.</p> <p>27. Her contracts to bind her husband.</p> <p>28. Husband may join in suits commenced by her.</p> <p>29. Wife of a person, sentenced to state prison, may be authorized to contract.</p> <p>30. Notice to husband. Duration of authority.</p> <p>31. Manner of securing to a married woman, the avails of her real estate, taken for public uses.</p> <p>32. Married woman, removing into this state without her husband, may contract as a feme sole.</p> <p>33. Effect, if her husband afterwards come into the state.</p> |
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Marriages prohibited, within certain degrees. 1821, 70, § 1.

SECTION 1. No man shall marry his mother, grandmother, daughter, grand daughter, stepmother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's daughter, wife's grand daughter, sister, brother's daughter, sister's daughter, father's-sister, or mother's sister.

Same subject. 1821, 70, § 1.

SECT. 2. No woman shall marry her father, grandfather, son, grandson, stepfather, grandmother's husband, daughter's husband, grand daughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother, brother's son, sister's son, father's brother, or mother's brother.

**SECT. 3.** No white person shall intermarry with any negro, indian or mulatto; and no insane person or idiot shall be capable of contracting marriage.

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Certain marriages void.  
1821, 70, § 2.  
Bigamy forbidden.  
1834, 116, § 3.

**SECT. 4.** All marriages contracted, while either of the parties has a former wife or husband living, shall be void, unless the former marriage shall have been dissolved, by a decree of divorce.

**SECT. 5.** When any persons, resident in this state, shall undertake to contract a marriage, contrary to the preceding provisions of this chapter, and shall, in order to evade those provisions, and with an intention of returning to reside in this state, go into another state or country, and there have their marriage solemnized, and shall afterwards return and reside here, such marriage shall be deemed and held void, in this state.

Marriages in another state, in evasion of these provisions, void.  
1821, 70, § 1.  
16 Mass. 157.  
8 Pick. 433.

**SECT. 6.** All persons resident in this state, intending to be joined in marriage, shall have their intentions published at three public religious meetings, on different days at three days' distance, exclusively, at least, from each other, in the city, town or plantation, where they respectively dwell; or have such intentions posted up by the clerk of such town or plantation fourteen days, in some public and conspicuous place therein, and shall deliver a certificate of such publishment, under the hand of the town or plantation clerk, to the minister or justice of the peace, solemnizing the marriage.

Publication of intentions of marriage.  
1821, 70, § 5.

**SECT. 7.** When a male under twenty one years, or a female under eighteen years of age, is to be married, the consent of the parent, guardian, or other person, having the care and government of such party, if within the state, shall be first obtained.

Consent of parent or guardian of a person under age.  
1821, 70, § 5.

**SECT. 8.** If the parties or either of them, live in a town or place, where there is no clerk, publishment shall be made, as above directed, in the adjoining town or plantation, and a certificate of such clerk shall be obtained before marriage.

Manner of publishing, where there is no town clerk.  
1821, 70, § 5.

**SECT. 9.** When the banns of matrimony between any persons are forbidden, and the reasons assigned in writing, by the person forbidding, and left with the town or plantation clerk, he shall issue no certificate as aforesaid, until a decision shall be made by two justices of the peace of the same county, approving the marriage, after due notice to, and a hearing of, all concerned; provided the person, forbidding the banns, shall, within seven days after filing his reasons, procure the decision of such justices, unless they shall certify that further time is necessary for the purpose, in which case a certificate shall be withheld, until the expiration of the certified time; and by the decision of such justices, he shall govern himself; and, if the decision be against the person forbidding, he shall pay all costs to the persons, whose marriage was forbidden, and the justices shall enter judgment therefor, and issue execution accordingly.

Proceedings, when banns are forbidden.  
1821, 70, § 6.

**SECT. 10.** All marriages, solemnized among the people called, quakers or friends, in the form heretofore practised, and in use in their meeting, shall be good and valid, and shall not be construed, as affected by any of the foregoing provisions in this chapter; and the clerk of the meeting, or the keeper of the records of the meeting, in which such marriages shall be solemnized, shall, once every

Form of marriage among quakers, and certificate thereof.  
1821, 70, § 9.

**CHAP. 87.** year, deliver a list of all such marriages to the clerk of the town, in which such clerk resides, on penalty of forfeiting fifty dollars; one half to the use of the county, and the residue to the use of the prosecutor.

Justices may solemnize marriages. 1821, 70, § 3. 1 Mass. 240. 7 Mass. 48.

**SECT. 11.** Every justice of the peace, appointed for any particular county, and in which he resides, may solemnize marriages in such county, where either of the parties reside; and every justice of the peace, appointed for each and every county in the state, may solemnize marriages in any county where either of the parties resides.

Also commissioned ministers. 1821, 70, § 3.

**SECT. 12.** Every ordained minister of the gospel, duly appointed and commissioned for that purpose, by the governor and council, shall have power to solemnize marriages within the county, for which he was appointed, and in which he resides; and in any other counties, when such power is given and expressed in his commission, between parties, either of whom resides in the county where the marriage is solemnized.

Tenure of office, of such ministers. 1821, 70, § 4.

**SECT. 13.** Such ordained minister shall hold his office, during the pleasure of the executive; and the commission shall be conclusive evidence, that he is an ordained minister; and when the commission shall be revoked, a copy of such revocation shall be filed in the clerk's office of said county.

Penalty, for marrying persons, contrary to the foregoing provisions. 1821, 70, § 7.

**SECT. 14.** If any justice of the peace, or minister commissioned as aforesaid, shall, knowingly and wilfully, join any persons in marriage, contrary to the provisions of this chapter, he shall forfeit and pay the sum of one hundred dollars; two third parts thereof to the use of the county, in which the offence was committed, and the residue to the prosecutor; to be sued for and recovered by the county treasurer, or by the parent, guardian or other person, under whose immediate care and government either of the parties was, at the time of such marriage: and every justice or minister, against whom such recovery shall be had, is forbidden from joining any persons in marriage afterwards.

Punishment, if unauthorized persons undertake to solemnize marriages. 1821, 70, § 7.

**SECT. 15.** If any person, thus forbidden, or any minister or other person, who is not authorized to solemnize marriages, shall join any persons in marriage, on conviction thereof upon indictment, he shall be punished by confinement to hard labor in the state prison for a term, not exceeding five years, or by fine, not exceeding one thousand dollars.

Records of marriages, and return thereof. 1821, 70, § 8.

**SECT. 16.** Each justice and minister shall keep a record of all marriages solemnized before him, and in the month of April, annually, shall make a return to the clerk of the town or plantation, in which the marriage is solemnized, certifying the names of the parties so married by him, and the place of their residence, and the date of the marriage; and for his neglect to comply with this requisition, he shall forfeit and pay the sum of fifty dollars; one half to the use of the county, and the other half to the person suing for the same.

Copies of such records, to be legal evidence.

**SECT. 17.** An attested or sworn copy of the record of a marriage, made and kept, as before mentioned, by a justice of the peace, or commissioned minister, or by the clerk of any town or plantation, shall be received in all courts, as evidence of the fact of mar-

riage ; but where such cannot be produced, other presumptive evidence may be admitted. CHAP. 87.

SECT. 18. No marriage solemnized before any known inhabitant of this state, professing to be a justice of the peace or an ordained minister of the gospel, duly appointed and commissioned to solemnize marriages, shall be deemed void, nor shall the validity thereof be in any manner affected, on account of any want of jurisdiction or authority in such supposed justice or commissioned minister, or on account of any omission or informality in entering the intention of marriage or publication of the banns ; provided, the marriage be in other respects lawful, and consummated with a full belief on the part of the persons married, or either of them, that they have been lawfully joined in marriage.

What marriages shall be valid.  
6 Greenl. 148.

SECT. 19. Whoever shall pull down any written posted publication, before the end of said fourteen days, shall forfeit and pay ten dollars for the use of the town or plantation.

Penalty for taking down publications.  
1821, 70, § 7.

SECT. 20. If any city, town, or plantation clerk shall make out and deliver, to any person, a false certificate of the publication of the banns of matrimony between two persons, knowing the same to be false in any particular, and be thereof convicted, he shall be fined one hundred dollars, or be imprisoned for the term of six months in the common jail of the county, where the offence is committed.

Penalty, for false certificate of publication.

SECT. 21. The clerk of every city, town or plantation shall return, to the clerk of the judicial courts for his county, a transcript of all records of marriages made upon his books, during the year for which he is clerk ; and it shall be the duty of the clerk of said courts to record the same in a book, to be kept for that purpose ; and he shall be allowed, from the county treasury, for recording, at the rate of twelve cents a page.

Town clerk, to make annual returns of marriages.

#### CERTAIN PROVISIONS RESPECTING HUSBAND AND WIFE.

SECT. 22. The supreme judicial court, on application of any married woman, whose husband has absented himself from the state, abandoning her, and not making sufficient provision for her maintenance, may empower her, during his absence, and till his return, in her own name, to make and execute any contract under seal or otherwise.

Mode of authorizing a wife to contract, when deserted by her husband.  
1821, 57, § 9.

SECT. 23. She may also be so authorized to make sale of any estate, real or personal, of which she is seized or possessed in her own right ; and duly execute all legal instruments, necessary for that purpose.

Sale of her real estate, in such case.  
1821, 57, § 9.

SECT. 24. She may also commence, prosecute and defend any action, in law or equity, to final judgment and execution, in like manner as if she were unmarried.

She may be a party to suits.  
1821, 57, § 9.

SECT. 25. The court may also, on her petition, authorize any person holding money or other personal property, to which the husband is entitled in her right, to pay and deliver the same to the wife ; and authorize her to give a discharge for the same, which shall be valid ; and to use and dispose of such property, during the absence of the husband, as her own property.

Payments due to her, in her own right.

SECT. 26. The application, for any of the purposes before

Mode of pro-

**CHAP. 87.** mentioned, may be presented and heard in any county; but the court, before granting any of the powers before mentioned, shall order notice to be given, in like manner as is prescribed, in case of libel for divorce filed by a wife, when the party complained of is without the state.

ceeding, in such cases.  
1821, 57, § 11.

**SECT. 27.** All contracts, lawfully made by any married woman by virtue of any power given her as aforesaid, shall be binding on her and her husband, in like manner as if their marriage had taken place after such contracts; and, during his absence, she shall be liable to be sued thereon, as if she were unmarried; and for all other acts done by her, while the power granted to her is continued.

Her contracts to bind her husband.  
1821, 57, § 10.

**SECT. 28.** No suit pending, where the wife shall be a party pursuant to power granted her as before mentioned, shall abate by his return into the state; but, on his application, he may be admitted to prosecute or defend jointly with her, as if their intermarriage had taken place after the commencement of such suit; but, if he shall not be admitted as a party, judgment shall be rendered, and execution issued and enforced by, or against her, in the same manner, as if judgment had been rendered [by or] against her before their intermarriage.

Husband may join in suits, commenced by her.  
1821, 57, § 10.

**SECT. 29.** When any married man shall be sentenced to confinement in the state prison, and confined under such sentence, the wife, on her petition, may be authorized to make contracts and conveyances, and perform all such acts, as are above mentioned, in case of abandonment by the husband.

Wife of a person, sentenced to state prison, may be authorized to contract.

**SECT. 30.** When application therefor shall be made, notice shall be given to the husband, prior to the grant of such powers to his wife; and her contracts shall have the same binding effect, as those made by her, as before mentioned, in case of absence of the husband. The authority of the wife so given shall continue, till the discharge of the husband from the state prison.

Notice to husband. Duration of authority.

**SECT. 31.** When the real estate of a married woman is taken for any rail road, turnpike, way, or public use, or shall be damaged by the laying out of such way, or any other public work, the damages, awarded therefor, shall be so invested and disposed of, as secure to her the same benefits of the sum awarded and the income of it, as she would have had, of, and in, the real estate and income; and, on her application to the supreme judicial court, it may hear and decide the case according to the course of chancery proceedings, and make such decrees, as may enforce and secure her rights.

Manner of securing, to a married woman, the avails of her real estate, taken for public uses.

**SECT. 32.** When a married woman shall come into this state from any other state or country, without her husband, he shall never lived with her in this state, she may make contracts and commence and defend suits, and dispose of property in her own name, as if she were unmarried; and shall be liable to be sued on contracts, made before his arrival in this state.

Married woman, removing into this state, without her husband, may contract as a feme sole.

**SECT. 33.** If the husband of such woman shall afterwards come into this state, and claim his marital rights, his arrival shall have the same effect, as to contracts made by her, or suits pending which she is a party, as if they had been first married at the time of his arrival here, and shall have no other.

Effect, if her husband afterwards come into the state.

## CHAPTER 88.

CHAP. 88.

## OF PARENTS AND CHILDREN.

- SECT. 1.** Property of minor children to be applied to their support, in certain cases.  
**2.** Guardian by will.
- SECT. 3.** Illegitimate child may be bound by the mother.  
**4.** Limitation of a mother's power to bind children.

**SECTION 1.** If any minor, who has a father living, has property, which is sufficient for his maintenance and education, in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the maintenance and education of such child may be defrayed out of his own property, in whole or in part; and the charges therefor may be allowed accordingly, in the settlement of the guardian's account.

Property of minor children to be applied to their support, in certain cases.  
 2 Mass. 113, 415.  
 4 Mass. 97.

**SECT. 2.** Every father may, by his last will, appoint a guardian for his minor children, until the age of fourteen respectively.

Guardian by will.

**SECT. 3.** The mother of an illegitimate child shall have power to bind him, during the life time of the putative father, as well as after his decease.

Illegitimate child may be bound by the mother.  
 2 Mass. 109.

**SECT. 4.** The power of the mother to bind legitimate, or illegitimate children, shall cease, in case of her subsequent marriage; and shall not be exercised during the continuance of such marriage, either by herself or her husband.

Limitation of a mother's power, to bind children.  
 4 Mass. 675.

## CHAPTER 89.

## OF DIVORCE AND DISSOLUTION OF MARRIAGES.

- SECT. 1.** Certain marriages void, without a divorce.  
**2.** Causes for divorce from bond of matrimony.  
**3.** Issue not barred from inheriting, in these cases.  
**4.** Questions of divorce, where tried.  
**5.** Exceptions may be filed.  
**6.** Causes for divorce from bed and board.  
**7.** Collusion between the parties.  
**8.** Manner of filing libel, and service.  
**9.** Notice, if libelee be out of the state.  
**10.** Lien upon lands of the husband, libelee.  
**11.** Libel may be presented to the court before notice.  
**12.** Where filed, if either party have left the county, or state.  
**13, 14.** Libel, when not sustained.  
**15.** Provision for wife, on divorce for impotency.
- SECT. 16, 17.** Provision, when divorced on her complaint, for other causes.  
**18.** Provisions, in case of divorce for adultery of the wife.  
**19, 20.** Proceedings, in case of divorce from bed and board.  
**21.** Libel for annulling a marriage.  
**22.** No decree in such case, without notice.  
**23.** Issue, when illegitimate.  
**24, 25.** When legitimate, after divorce.  
**26.** Court may free the wife from restraint, pending a libel.  
**27.** Disposal of children, on a divorce.  
**28.** Power of the court, as to compulsory processes.  
**29.** Decrees of other states, when void in this state.  
**30.** When valid in this state.  
**31.** Either party may have a trial by jury.  
**32.** Court may grant a new trial.



## CHAP. 89.

Certain marriages void, without a divorce. 1821, 71, § 3. 4 Pick. 32. 8 Pick. 133.

Causes for divorce from bond of matrimony.

Adultery. 1821, 71, § 3. 6 Mass. 147. 3 Greenl. 136. 4 Greenl. 100, 326.

Impotency. 1821, 71, § 3.

Desertion for five years. 1829, 440, § 1. 1830, 456. 6 Greenl. 210.

Joining the shakers. 1829, 440, § 1. 1830, 456.

Sentence to prison for five years. 1829, 440, § 1. 1830, 450.

Fraud in obtaining consent. 1835, 177, § 1.

Divorce of the other party. 1834, 116, § 2.

Habitual drunkenness. 1838, 342.

Issue not barred

**SECTION 1.** All marriages prohibited by law, on account of consanguinity or affinity between the parties, or for the cause, that either of the parties has a former husband or wife then living, except as hereinafter provided, or was an idiot or insane, when the marriage was solemnized, and all marriages between a white person and a negro, indian or mulatto, shall, if solemnized in this state, be absolutely void, without any decree of divorce or other legal process; and the sentence of either party, to imprisonment for life in the state prison, and confinement under such sentence, shall dissolve the bond of matrimony, without any legal process.

**SECT. 2.** A divorce may be decreed from the bond of matrimony, in the following cases, and for the following reasons:

*First.* For the cause of adultery committed by either of the parties, within or without this state, provided, they have not cohabited together as husband and wife, after the commission of the crime was well known to the libellant;

*Second.* For impotency in either of the parties, existing at the time of the marriage;

*Third.* Where either of the parties has deserted, or shall desert the other, wilfully and without reasonable cause, for the term of five successive years, and without consent or collusion of the parties, or any intention, on the part of the party deserted, thereby to procure cause for a divorce;

*Fourth.* Where either of the parties shall join and continue with the society called shakers, for the term aforesaid, separate from the other party, without consent or collusion, or an intention to enable the other party thereby to procure cause of divorce;

*Fifth.* Where either of the parties shall be sentenced to confinement and hard labor in a state prison or penitentiary, in any of the United States, for said term of five years; provided, that in neither of the last three cases, shall a divorce be granted on the application of the party deserting, joining said society, or confined in prison as aforesaid; nor, on application of either, when both parties shall have cohabited together, within the term of five years, next before the filing of the libel, or between that time and the time of the trial, or decision on the same;

*Sixth.* Where the consent of one of the parties to the marriage was obtained, by the gross and deliberate fraud or false pretences, practised by the other, a divorce may be granted on the application of the *other* [former]; provided the parties have not cohabited, as husband and wife, after such fraud was known to the party, thus deceived;

*Seventh.* In all cases, where one party has been, or shall be, divorced from the bond of matrimony, the court granting the same, may, on application of the other party, grant a like divorce, on such terms and conditions as such court, in the exercise of a sound discretion, may judge reasonable;

*Eighth.* Where either of the parties is, or shall become, a confirmed, habitual and common drunkard, and shall so continue for the term of three years, thereby incapacitating him or herself, from making suitable provision for, and taking proper care of the family.

**SECT. 3.** No decree [divorce] from the bond of matrimony for

any of the causes, mentioned in the preceding section, shall bar the issue of such marriage from inheriting; but the question of the right of such issue shall remain unaffected by any thing in this chapter. **CHAP. 89.**

**SECT. 4.** All questions of divorce, dissolution of marriage, and alimony shall be heard and tried by the supreme judicial court held in the county, in which the parties or one of them live; and any one of the justices thereof is empowered to decide such questions.

**SECT. 5.** Any person, aggrieved at the opinion of such justice, upon a matter of law, may file his exceptions to the same, and have a full hearing thereupon before a majority of the court, as provided in civil actions.

**SECT. 6.** A divorce from bed and board may be granted, for the cause of extreme cruelty, in either of the parties; or whenever the husband shall grossly or wantonly, and cruelly, neglect or refuse to provide suitable maintenance for his wife, he being of sufficient ability, though without deserting her.

**SECT. 7.** When it shall appear, that the adultery or cruelty, complained of, is matter of collusion between the parties, and for the purpose of procuring a divorce, or if both parties have been guilty of adultery, no divorce shall be decreed.

**SECT. 8.** The party complaining may file his or her libel in the office of the clerk of the court, setting forth, as particularly as can be done, the causes of complaint, making a distinct count for each alleged cause of divorce, which shall be signed by the party complaining; and shall cause the other party, if in this state, to be served with an attested copy of the same, and with a summons to be at the court; and such service to be made fourteen days at least, before its session, where the trial is to be had.

**SECT. 9.** If the party, complained of, be not in the state, the libel may be presented to the court in session in any county; and such court shall order what notice shall be given to the other party, and the manner of giving it, returnable in the county where the libelant resides.

**SECT. 10.** When such libel shall be filed, by the wife, in the clerk's office, or presented to the court in session, praying for a divorce from bed and board, and she shall cause legal notice to be served on him, all his lands in the state shall be thereby bound to answer the order and judgment of court, in case a divorce should be decreed upon her libel; provided, such lien be prayed for in the libel.

**SECT. 11.** The libel may, in all cases, at the option of the libelant, be presented in the first instance to the court, as provided in the ninth section, and notice ordered and given as therein mentioned.

**SECT. 12.** Where the libelant has left the county, in which the parties have lived together, the adverse party still living in the same county, the libel shall be heard and tried in the court held for that county; and, if either party has removed from the state, and the other be resident in this state, the libel shall be heard and tried in the county, where such other party resides.

**SECT. 13.** No divorce shall be decreed for any cause, if the parties never lived together, as husband and wife, in this state; nor for any cause, which shall have occurred in any other state or coun-

from inheriting, in these cases.

1829, 440, § 1.

Questions of divorce, where tried.

1821, 71, § 1.

1833, 310.

2 Mass. 167.

3 Mass. 184.

Exceptions may be filed.

1833, 310.

Causes for divorce from bed and board.

1821, 71, § 3.

14 Pick. 131.

Collusion between the parties.

1821, 71, § 4.

6 Mass. 276.

3 Greenl. 398.

3 Pick. 299.

Manner of filing libel, and service.

1821, 71, § 2.

3 Mass. 159,

391.

5 Mass. 197.

6 Mass. 36.

7 Mass. 502.

9 Mass. 422.

Notice, if libel be out of the state.

1821, 71, § 2.

Lien upon the lands of the husband, libel-ee.

1821, 71, § 5.

Libel may be presented to the court, before notice.

Where filed, if one party have left the county or state.

9 Greenl. 140.

Libel, when not sustained.

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Same subject.  
3 Mass. 153.  
6 Mass. 263.

Provision for  
wife, on divorce  
for impotency.  
1821, 71, § 5.

Provision, when  
divorced, on her  
complaint, for  
other causes.  
1821, 71, § 5.  
1829, 440, § 2.  
10 Mass. 260.  
13 Mass. 231.  
14 Mass. 219.  
5 Pick. 427, 428,  
461.

Same subject.  
1821, 71, § 5.

Provisions, in  
case of divorce  
for adultery of  
the wife.  
1821, 71, § 5.  
1829, 440, § 2.

Proceedings, in  
case of divorce  
from bed and  
board.  
1821, 71, § 5.  
1 Mass. 341.  
2 Pick. 316.  
5 Pick. 461.  
15 Mass. 196.

try, unless the parties had, before such cause occurred, lived together as husband and wife, in this state.

**SECT. 14.** No divorce shall be decreed for any cause, which occurred in any other state or country, unless one of the parties was then living in this state; provided, that nothing in this or the preceding sections shall be construed to include cases of desertion by either of the parties.

**SECT. 15.** When a divorce shall be decreed, for the impotence of either of the parties, the wife shall have all her lands restored to her; and the court may enter a judgment for all or such part of her personal estate, which had come to her husband's hands by virtue of the marriage, or the value thereof, as the court may judge to be reasonable; and may make use of such process, as may be necessary, to compel the husband to disclose on oath, what personal estate of the wife had so come to his hands, how it had been disposed of, and how much remained in his hands, at the time of divorce.

**SECT. 16.** Where a divorce is granted to the wife, on the libel of the wife, for any other of the causes mentioned in the second section of this chapter, she shall be entitled to her dower in the husband's estate, to be assigned to her in the same manner, as though her husband were dead; and the real estate, which her husband held in her right, the court may assign to the wife, for her own use; and also the personal estate, which the husband received, in virtue of the marriage, or such part thereof, as they shall deem reasonable; or a sum of money, equal in value to the whole of the same; or to such part thereof, as shall be judged proper.

**SECT. 17.** If such personal estate, so assigned, or its value, together with her dower in the husband's real estate, should be insufficient for her reasonable and comfortable support, the court may allow her alimony, out of her husband's estate, so long as she remains unmarried, as is provided in the nineteenth section following.

**SECT. 18.** Where the divorce shall be decreed, on the libel of the husband, for adultery committed by the wife, the husband shall hold her personal estate forever, and her real estate, of which she was seized during coverture, during his natural life, if they have had a child born alive during the marriage; otherwise, during her natural life only, if he should survive her; but the court may allow her for her subsistence, so much of her personal or real estate, as they shall judge to be necessary.

**SECT. 19.** Whenever a divorce shall be decreed, from bed and board, for the extreme cruelty of the husband, or his grossly or wantonly, and cruelly, neglecting or refusing to provide suitable maintenance for her, he being of sufficient ability to do it, if there be no issue living, the wife shall be restored to all her lands, and be allowed, out of his personal estate, such alimony, as the court shall think reasonable, having regard to the personal property, that came to the husband by the marriage, and his ability; but, if there be issue living, at the time of the divorce, then the court may decree, what they may judge right, in respect to the restoration of property, or granting alimony; and such decree may be altered, from time to

time, by the court, as may be found just and reasonable; and the court, in the above case, to effectuate any purpose aforesaid, may order the real estate of the husband, or any part of it, or of the rents and profits, to be assigned and set out to the wife for and during her life, and employ such legal process, as they may deem necessary, to carry the decree into execution.

SECT. 20. If a divorce from bed and board is decreed, for the cruelty of the wife, whether there be issue, or not, at the time of the divorce, the court may order her a restoration of the whole or such part of her lands, and assign alimony, as they may judge proper.

Same subject.  
1821, 71, § 5.

SECT. 21. Whenever the validity of a marriage is denied or doubted, either party may file a libel for annulling the same, in like manner, as a libel for a divorce; and, upon due proof of the nullity of the marriage, it shall be declared void by sentence of said court; and, upon due proof of its validity, the court, by their decree, shall affirm the marriage.

Libel for annulling a marriage.  
1 Pick. 136.

SECT. 22. No such decree of dissolution or affirmation, shall prejudice the rights of the party, against whom the same may be passed, unless such party had been personally notified to answer to the libel, or had appeared and answered to the same.

No decree, in such case, without notice.

SECT. 23. Upon dissolution of a marriage, by divorce on sentence of nullity, on account of consanguinity or affinity between the parties, or of any marriage between a white person, and a negro, indian or mulatto, the issue of the marriage shall be deemed, to be illegitimate.

Issue, when illegitimate.

SECT. 24. If the dissolution of the marriage be on account of the non age, insanity or idiocy of either of the parties, the issue of the marriage shall be deemed to be the legitimate issue of the parent, who, at the time of the marriage, was capable of contracting marriage.

When legitimate, after divorce.  
1821, 71, § 6.  
1829, 440, § 1.

SECT. 25. When a marriage is dissolved, on account of a prior marriage of either of the parties, and it shall appear, that the second marriage was contracted in good faith, and in the full belief of the parties, that the former husband or wife was dead, that fact shall be stated in the sentence of divorce or nullity; and the issue of such second marriage, born or begotten before the commencement of the suit, shall be deemed to be the legitimate issue of the parent, who, at the time of the marriage, was capable of contracting; and such legitimacy shall be presumed, on the same principles of evidence, as in a case where both parties were enabled to contract lawful marriage, at the time of the solemnization of the supposed marriage.

Same subject.

SECT. 26. After a libel has been filed for the dissolution of a marriage, or for a divorce from the bond of matrimony, or from bed and board, said court may, in any county, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty, during the pendency of such libel.

Court may free the wife from restraint, pending a libel.

SECT. 27. The court, when decreeing the dissolution of a marriage, or a divorce from the bond of matrimony, or from bed and board, may make such further decree, as they shall judge expedient, concerning the custody, care and maintenance of the minor

Disposal of children, on a divorce.

**CHAP. 89.** children of the parties; and may determine, with which of the parents, the children or any of them shall remain; and the court may, from time to time, revise and alter such decree, as to the custody, care and maintenance of the children, as the circumstances of all concerned may require, or render expedient.

Power of the court, as to compulsory processes. 1821, 71, § 2, 5.

**SECT. 28.** The court, in the execution of the powers given to them in this chapter, may employ such compulsory process, as they may deem proper, whether by execution or attachment, or such other form, as shall be effectual.

Decrees of other states, when void in this state. 14 Mass. 227. 1 Pick. 506.

**SECT. 29.** When an inhabitant of this state shall go into any other state or country, in order to obtain a divorce for any cause, which had occurred here, and whilst the parties resided here, or for any cause which would not authorize a divorce by the laws of this state, a divorce, so obtained, shall be of no force or effect in this state.

When valid, in this state. 9 Greenl. 140.

**SECT. 30.** In all other cases, a divorce, decreed in any other state or country, according to the law of the place, by a court having jurisdiction of the cause and of both the parties, shall be valid in this state.

Either party may have a trial by jury. 1839, 377.

**SECT. 31.** In all cases of libel for divorce from the bond of matrimony, either party shall be entitled to a trial by jury, on requesting it; and, if the jury shall find the facts, stated in the libel, to be true, and if such facts shall be sufficient, by the laws of the state, to authorize a divorce, the court shall thereupon decree a divorce, as prayed for in the libel.

Court may grant a new trial. 1839, 377.

**SECT. 32.** The justices of the supreme judicial court may, at their discretion, and on such conditions as they may impose, grant a new trial in cases of divorce, whenever they shall judge it reasonable, and whenever the parties have not lived together, since the former trial, on application of the party, aggrieved by the judgment then given; provided such new trial shall not be granted, after the lapse of three years after the former judgment.

## CHAPTER 90.

### OF MASTERS, APPRENTICES AND SERVANTS.

- SECT. 1.** Binding of minors, under fourteen years of age.
- 2.** Binding minors, above the age of fourteen.
- 3.** Indentures, in such cases.
- 4.** By whom indentures shall be kept.
- 5.** Consideration, how secured.
- 6.** Indentures to be binding.
- 7.** Void, on the death of the master.

- SECT. 8.** Minor not to be transferred, nor transported from the state.
- 9.** Proceedings, for discharge of apprentice for ill treatment.
- 10.** Proceedings, to discharge him for misbehavior.
- 11.** How recovered, in case he absconds.

Binding of minors, under fourteen years of age. 1821, 170, § 1.

**SECTION 1.** Children, under the age of fourteen years, may be bound as apprentices or servants, until that age, without their consent, by their father, if living; and if not, by their mother or legal guardian: and, if they have no parent or guardian, they may bind

themselves, with the approbation of the selectmen of the town, or assessors of the plantation, where such minor children reside. CHAP. 90.

**SECT. 2.** Minors, above the age of fourteen years, may be bound in the same manner with their consent; which shall be distinctly expressed in the indenture and testified by their signing the same; females, to the age of eighteen years, or to the time of their marriage within that age, and males, to the age of twenty one years. Binding of minors, above the age of fourteen. 1821, 170, § 1. 10 Pick. 63.

**SECT. 3.** No minor of any age shall be bound as aforesaid, unless by an indenture of two parts, signed, sealed and delivered by both parties; and, when the minor shall bind himself, as aforesaid, by the consent of the selectmen or assessors before mentioned, their consent and approbation shall be certified in writing, by them signed on each part of the indenture. Indentures, in such cases. 1821, 170, § 1. 13 Maine, 151.

**SECT. 4.** One part of the indenture shall be kept by the master or mistress, to whom the minor is bound, and the other part, by the parent or guardian, for the use of the minor; and, when made by the approbation of the selectmen, or assessors, as aforesaid, it shall be deposited with the town or plantation clerk. By whom indentures shall be kept. 1821, 170, § 1.

**SECT. 5.** All considerations allowed by the master or mistress, in any contract of service or apprenticeship, shall be secured by the indenture to the sole use of the minor; and to be paid to such minor, without any control on the part of the parent or guardian, at any time. Consideration, how secured. 1821, 170, § 1. 7 Mass. 145.

**SECT. 6.** All indentures, made in the manner and form prescribed in this chapter, shall be binding and effectual in law, against all parties thereto. Indentures to be binding. 1821, 170, § 1.

**SECT. 7.** No indenture, between any minor, his parent or guardian, and any master or mistress, or their executors and administrators, shall be binding on such minor, parent or guardian, after the decease of such master or mistress; but, on the death of such master or mistress, the indenture shall be deemed void from that time; and the minor may be bound out in the manner aforesaid. Void, on the death of master. 1821, 170, § 2.

**SECT. 8.** A minor, bound in manner aforesaid, as an apprentice or servant to any master or mistress, shall not be transferable by such master or mistress, to another person, nor shall such master or mistress have any authority to transport such apprentice or servant beyond the jurisdiction, within which the indenture was made, and with reference to the laws of which, such parties contracted. Minor, not to be transferred, nor transported out of the state. 8 Mass. 299.

**SECT. 9.** Parents and guardians, who have bound minors, and selectmen and assessors, who have given approbation to the binding of minors, by their own act, shall have a right to inquire into their usage, and defend them from the cruelty or other injury of their masters and mistresses; and such parents, guardians and selectmen may complain to the district court of the county, of which such master or mistress is an inhabitant, against them for any such cruelty, neglect or injury; and said court, after giving due notice to the person complained of, may hear and decide on such complaint; and, if the same shall be supported, may render judgment, that the minor be discharged from his apprenticeship or service, with costs against the respondent, and award execution accordingly; in which case the indenture shall be void, from the time of the rendition of Proceedings, for discharge of apprentice, for ill treatment. 1821, 170, § 3. 4 Pick. 106.

**CHAP. 90.** such judgment. If the complaint be not supported, the court shall award costs for such respondent, against the parent, guardian or selectmen or assessors, where the complaint shall appear, to the court, to have been made without probable cause, and issue execution accordingly.

Proceedings, to discharge him for misbehavior. 1821, 170, § 4.

**SECT. 10.** If any apprentice or servant shall be guilty of any gross neglect or misbehavior, or wilful refusal to do his duty, the master or mistress may complain thereof to said court, in the county where the complainant lives; and the court shall, after giving notice to such apprentice or servant, and all persons interested, by means of signing or approving the indenture, hear and decide the cause; and, if the complaint is supported, may discharge the said master or mistress, from the obligation of said indenture, with costs, and award execution therefor; and the apprentice or servant may be bound out anew.

How recovered, in case he absconds. 1821, 170, § 5.

**SECT. 11.** If any apprentice or servant, bound as aforesaid, shall depart from the service of his master or mistress, any justice of the peace of the county, where the delinquent may be found, on complaint of such master or mistress, may issue his warrant against him, and cause him to be brought before such justice; who, upon a hearing, may order such apprentice or servant to be returned to the place of his duty, or commit him to the jail of said county, for a term not exceeding twenty days, unless sooner discharged by the master or mistress. And the warrant of such justice shall authorize the officer, to convey such delinquent to his master or mistress, though they may reside in another county. The expenses, attending the above proceedings, shall be paid by the complainant; and may be recovered by action on the deed of indenture; and, if recovered of a guardian, they shall be a valid and proper article of charge in his guardianship account.

## TITLE SEVENTH.

## Of acquisition of titles to real and personal estate.

- CHAPTER 91. Of conveyances by deed; their form, acknowledgment, proof, registry, operation and construction.
92. Of wills, testaments and devises.
93. Of title by descent.
94. Of title to real estate, taken by execution.
95. Of estates in dower, by curtesy and at will.

## CHAPTER 91.

## OF CONVEYANCES BY DEED; THEIR FORM, ACKNOWLEDGMENT, PROOF, REGISTRY, OPERATION AND CONSTRUCTION.

- |  |   |
|--|---|
| <p>SECT. 1. What interests in land will pass by deed.</p> <p>2. Lands purchased by aliens.</p> <p>3. Lands purchased from aliens, before January 1, 1834.</p> <p>4. Contingent remainders, and other limited estates.</p> <p>5. Conveyances by married women.</p> <p>6. Conveyance by tenant in tail.</p> <p>7. Life estate, with a vested remainder.</p> <p>8. Quitclaim deed.</p> <p>9. Conveyance of a greater estate than grantor possesses.</p> <p>10. Expectant estate, not defeasible by tenant of precedent estate.</p> <p>11. Construction of the two preceding sections.</p> <p>12. Grant to one for life, and to his right heirs after his death.</p> <p>13. Tenancy in common, how created.</p> <p>14. Deeds made by an agent or attorney.</p> <p>15. Conveyances to counties.</p> <p>16. Acknowledgment of deeds.</p> <p>17. Before whom made.</p> <p>18. Proof of deed not acknowledged, after death of grantor.</p> | <p>SECT. 19. How proveable, without subscribing witnesses.</p> <p>20, 21, 22. Proceedings, if grantor refuse to acknowledge.</p> <p>23. Not proveable, having no subscribing witness.</p> <p>24. Proof of deed to be indorsed thereon.</p> <p>25. Register to certify the time, when he receives a deed.</p> <p>26. No deed effectual, without registry, against persons having no notice.</p> <p>27. Bond of defeasance not effectual, unless recorded.</p> <p>28. Pews declared real estate.</p> <p>29. Record of deeds thereof, and levies thereon.</p> <p>30. Estates greater than at will must be conveyed by writing.</p> <p>31. Trusts not created, but by writing.</p> <p>32. No trust to defeat the title of a bona fide purchaser without notice.</p> <p>33. Record of trust, equivalent to notice.</p> |
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SECTION 1. When any person shall make a deed of any lands or other real estate, owned by him in severalty, or in common with others, acknowledged and recorded in the manner prescribed in this chapter, whether at the time of the execution and delivery of the deed he is seized, or not seized, of such lands, or estate, but to or for which he has a right of entry, such lands or estate, or all the title or interest, which the grantor has in or to the same, shall pass by such deed of conveyance, as effectually as if the grantor was, at the time of the conveyance, seized of the same.

SECT. 2. Any person, who has purchased real estate during alienage, and afterwards become naturalized, shall have power, and

What interests in land will pass by deed. 1821, 36, § 1, 5. 6 Mass. 24. 13 Mass. 571.

Lands purchased by aliens. 1834, 106, § 1.



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Lands purchas-  
ed from aliens,  
before January  
1, 1834.  
1834, 105, § 3.

Contingent re-  
mainders, and  
other limited  
estates.

Conveyances  
by married wo-  
men.

Conveyance by  
tenant in tail.  
1821, 36, § 1.  
4 Mass. 189.  
9 Mass. 161.

Life estate,  
with a vested  
remainder.  
1821, 36, § 5.

Quitclaim deed.  
7 Mass. 381.

Conveyance of  
a greater estate,  
than grantor  
possesses.

Expectant es-  
tate, not defea-  
sible by tenant  
of precedent  
estate.

Construction  
of the two pre-  
ceding sections.

Grant to one for  
life, and to his  
right heirs after  
his death.  
1821, 38, § 3.  
4 Pick. 198.

Tenancy in  
common, when  
created.  
1821, 35, § 1.  
4 Mass. 566.  
7 Mass. 131.  
8 Mass. 274.  
11 Mass. 469.  
16 Mass. 59.  
12 Pick. 534.  
22 Pick. 556.

be entitled, to hold the same in fee simple, and to convey the same, in like manner, as if he had been a native born

**SECT. 3.** No title or claim of any citizen of the state, in actual possession of lands, on or before the first of eighteen hundred and thirty four, shall escheat or be def account of the alienage of any person, through or from w title to such lands was derived ; but he may sell and dispo same.

**SECT. 4.** When any contingent remainder or executor or other estate in expectancy, has been so granted or limite [any] person, that in case of his death before the happeni contingency, the estate would descend to his heirs in fe such person may, before the happening of the continge assign or devise the premises, subject to such contingency.

**SECT. 5.** The joint deed of husband and wife shall be to convey her real estate, but not to bind her to any c or estoppel therein.

**SECT. 6.** Any person, actually seized of lands, as tena may convey the same in fee simple ; and such conveyance the estate tail, and all the remainders and reversions c thereon.

**SECT. 7.** When lands are held by one person for lif vested remainder in tail to another, the tenant for life and r man may convey the same, in fee simple, by their joint c such conveyance shall bar the estate tail, and all the re and reversions expectant thereon.

**SECT. 8.** A deed of release or quitclaim, of the usual this state, shall pass all the estate which the grantor had c convey, by a deed of bargain and sale.

**SECT. 9.** A conveyance by a tenant for life or ye greater estate than he possessed or could lawfully convey, work a forfeiture of his estate, but shall pass to the grant estate, which the tenant could lawfully convey.

**SECT. 10.** No expectant estate shall be defeated or b any alienation or other act of the owner of the preceden nor by any destruction of such precedent estate by dis the forfeiture, surrender or merger thereof.

**SECT. 11.** The two preceding sections shall not be c to control or affect the provisions in the sixth and seventh of this chapter, as to estates tail.

**SECT. 12.** When lands are given, by deed or will, to son for life, and after his death to his heirs in fee, or by that effect, the conveyance or devise shall be construed t estate for life only, in such first person, and a remainder i ple in his heirs.

**SECT. 13.** All conveyances and devises of land, mad or more persons, except conveyances in mortgage, shall strued to create estates in common, unless it shall be c therein, that the grantees or devisees shall take the lands, j as joint tenants, or in joint tenancy, or to them and the su them ; but, where any estate has vested in the survivor or : on the principle of joint tenancy, it shall be so held.

**SECT. 14.** All deeds and contracts executed by an authorized agent, for an individual or corporation, either in the name of the principal by such agent, or in the name of such agent for the principal, shall be considered as the deed or contract of such principal.

**SECT. 15.** All conveyances or grants to the inhabitants of a county, their successors and assigns forever, or which have been made to such inhabitants or their treasurer, or committee, or other person, by any form of conveyance, for the use and benefit of such county, shall be construed, as valid, as though made to such inhabitants by their corporate name.

**SECT. 16.** The acknowledgment of deeds shall be by the grantors, or by one of them, or by the attorney executing the same.

**SECT. 17.** The acknowledgment may be made before any justice of the peace in this state, or any justice of the peace, magistrate or notary public within the United States, or any commissioner, appointed for that purpose by the governor of this state, or before any minister or consul of the United States, or notary public in any foreign country.

**SECT. 18.** When any grantor or lessor shall die, or depart from this state, without having acknowledged his deed, the execution thereof may be proved by any subscribing witness, before any court of record in this state.

**SECT. 19.** When any such witnesses are dead, or out of the state, the hand writing of the grantor and such subscribing witnesses may be proved, by the testimony of one or more witnesses.

**SECT. 20.** If any grantor shall refuse to acknowledge his deed, the grantee, or person claiming under him, may leave with the register of deeds a true copy thereof; and such copy, so left in his office, shall be a caution to all persons for forty days, and during that time have the same effect, as recording said deed.

**SECT. 21.** Any such grantee, or person claiming under him, may apply to a justice of the peace of the county, where the land lies, or where the grantor resides, who may summon the grantor to appear, at a certain time and place, before him, to hear the testimony of the subscribing witnesses; which summons shall state the date of the deed, the names of the parties thereto, and of the subscribing witnesses, and shall be served seven days before the time assigned for proving the deed.

**SECT. 22.** At such hearing, it being made to appear, by the testimony of such witnesses, that they saw such deed duly executed by the grantor, and such being satisfactory to such justice, he shall certify the same thereon, and, in his certificate, shall state the presence or absence of the grantor, as the facts may be.

**SECT. 23.** No deed, hereafter made, not having at least one subscribing witness, shall be proved as aforesaid before any court or justice.

**SECT. 24.** A certificate of the acknowledgment or proof of the execution of the deed, in either of the modes before stated, shall be indorsed on the deed or annexed to it, and such deed and certificate may then be recorded at length in the registry of deeds; and no deed shall be recorded without such certificate.

**SECT. 25.** The register shall certify on every deed recorded by

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Deeds made by an agent or attorney.

1823, 220.  
1 Greenl. 231, 330.

Conveyances to counties.  
1821, 46, § 2.

Acknowledgment of deeds.  
1821, 36, § 1.

Before whom made.  
1821, 36, § 1.  
6 Pick. 86.

Proof of deed, not acknowledged, after death of grantor.  
1821, 36, § 1.  
1 Mass. 59.  
4 Mass. 541.

How proveable, without subscribing witnesses.  
1821, 36, § 1.

Proceedings, if grantor refuse to acknowledge.  
1821, 36, § 2.

Same subject.  
1821, 36, § 2.

Same subject.  
1821, 36, § 2.

Not proveable, having no subscribing witness.

Proof of deed, to be indorsed thereon.  
22 Pick. 91.

Register to cer-

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tify the time, when he receives a deed. 10 Pick. 72.

No deed effectual, without registry, against persons having no notice. 1821, 36, § 1. 14 Mass. 296. 15 Mass. 439. 7 Greenl. 195, 461. 1 Pick. 164. 14 Pick. 224. 15 Pick. 185. 22 Pick. 295, 540.

Bond of defeasance, not effectual, unless recorded. 1821, 36, § 3.

Pews declared, real estate. 1821, 36, § 7. 10 Mass. 323.

Record of deeds thereof and levies thereon. 1821, 36, § 8.

Estates, greater than at will, must be conveyed by writing. 1821, 53, § 2. 9 Greenl. 62.

Trusts not created, but by writing. 1821, 53, § 2.

No trust to defeat the title of a bona fide purchaser, without notice.

Record of trust, equivalent to notice.

him, the day and hour, when it was received; and every deed shall be considered as recorded at the time, when received; and [he] shall also enter in a book, to be kept for that purpose, and to be open, in business hours, to the inspection of any person, the names of the grantor and grantee, their places of residence, and date when received by the register; said entries to be made, within one hour after delivery of the deed to the register.

**SECT. 26.** No conveyance of any estate in fee simple, fee tail, or for life, and no lease for more than seven years from the making thereof, shall be good and effectual against any person, other than the grantor, his heirs and devisees, and persons having actual notice thereof, unless it is made by a deed recorded, as provided in this chapter.

**SECT. 27.** A deed, purporting to convey an absolute estate of any kind in lands, but which is intended to be defeasible by any bond or other instrument of defeasance, shall not be defeated by means of such bond or other instrument, against any other than the maker of such defeasance, his heirs and devisees, unless the instrument of defeasance shall have been duly recorded in the registry of deeds, in which the deed, referred to in the bond or defeasance, shall have been recorded.

**SECT. 28.** All pews and rights in houses of public worship shall, in law, be deemed real estate.

**SECT. 29.** All deeds of, and executions extended on, such pews or rights may be recorded by the town or plantation clerk, where situated, and shall have the same effect, as if recorded in the registry of deeds.

**SECT. 30.** No estate or interest in lands, unless created by some writing, and signed by the grantor or his attorney, shall have any greater force or effect, than an estate or lease at will; and no estate or interest in lands shall be granted, assigned or surrendered, unless by some writing signed as aforesaid, or by operation of law.

**SECT. 31.** All trusts concerning lands, excepting those which arise or result by implication of law, must be created and manifested by some writing, signed by the party creating and declaring it, or by his attorney.

**SECT. 32.** No such trusts, whether created or declared by the parties, or implied by law, shall defeat the title of a purchaser for a valuable consideration, and without notice of the trust; nor prevent a creditor, who has no notice of the trust, from attaching the premises, and taking them in execution, in like manner, as if no such trust existed.

**SECT. 33.** When such a trust is created, or declared by an instrument in writing, the recording of it in the registry for the county or district, where the land lies, shall be considered equal to actual notice thereof to all persons, claiming under a conveyance, attachment or execution, made or levied, after such recording.

## CHAPTER 92.

CHAP. 92.

## OF WILLS, TESTAMENTS AND DEVISES.

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| <p><b>SECT. 1.</b> Who may make a will.</p> <p>2. Form, and mode of execution.</p> <p>3. Express revocation.</p> <p>4. Implied revocation.</p> <p>5. Devise or legacy to a subscribing witness void, in certain cases.</p> <p>6. If legacy be paid or refused, legatee may be a witness.</p> <p>7. Attestation good, if such witness die before probate.</p> <p>8. If witness be admitted to prove the will, he cannot afterwards claim the legacy.</p> <p>9. Nuncupative will.</p> <p>10. Wills by soldiers or mariners.</p> <p>11. Limitation of proof of such will.</p> <p>12. Devise of land, of which testator is disseized.</p> <p>13. Devise will pass an estate subsequently acquired.</p> | <p><b>SECT. 14.</b> Contribution, in case property be taken from a devisee.</p> <p>15. Restriction of this provision.</p> <p>16. Qualification of the two preceding sections.</p> <p>17. Provision for posthumous children.</p> <p>18. Effect, if an heir have no provision in a will.</p> <p>19. Heir of devisee entitled to the devise.</p> <p>20. Such share liable to contribution.</p> <p>21. Provision, in case a devisee, liable to contribute, be insolvent.</p> <p>22. Undevised property, how appropriated.</p> <p>23. Meaning of the words, "real estate."</p> <p>24. Questions under this chapter, how decided.</p> <p>25. Effect of probate of a will.</p> <p>26. Construction of devises.</p> |
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**SECTION 1.** Every person of the age of twenty one years and of sound mind, lawfully seized of any lands, tenements or hereditaments, or of any right or interest therein in his own right, in fee simple or for the life of another person, or being the owner of any personal estate, may dispose of the same, by his last will and testament; and all such estate, not so devised or bequeathed by any will, shall be distributed, as the estate of an intestate.

Who may make a will.  
1821, 38, § 1, 16.  
12 Mass. 525.

**SECT. 2.** All wills of lands or personal estate shall be in writing and signed by the devisor, or testator, or by some person in his presence, and by his express direction, and shall be attested and subscribed in his presence by three credible witnesses, or the same shall be void: and if the witnesses are competent at the time of attestation, their subsequent incompetency shall, in no case, prevent the probate of the will, if it be otherwise satisfactorily proved.

Form, and mode of execution.  
1821, 38, § 2.  
1 Mass. 258.  
5 Mass. 219.  
12 Mass. 358.  
9 Pick. 350.  
17 Pick. 134, 373.  
21 Pick. 98.

**SECT. 3.** No will, in writing, of real or personal estate, or any part of it, shall be revoked, except by some subsequent will, codicil or other writing declaring the same, or by burning, canceling, tearing or obliterating the same by the testator, or in his presence and by his direction, with the intention of revoking; or unless the same be altered by some writing of the testator, by him signed and attested, as in case of a will.

Express revocation.  
1821, 38, § 2.  
14 Mass. 208.  
7 Pick. 61.

**SECT. 4.** Revocations of wills, implied by law, from subsequent changes in the condition and circumstances of the testator, shall not be deemed or construed as embraced in the provisions of the preceding section.

Implied revocation.

**SECT. 5.** All devises and legacies to a subscribing witness to a will or codicil shall be void, unless there be three other competent subscribing witnesses to the same; but a mere charge on the lands of the devisor, for the payment of his debts, shall not prevent any of his creditors, whose debt is so charged, from being a competent witness.

Devise or legacy to a subscribing witness, void in certain cases.  
1821, 38, § 8, 9.

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If legacy be paid, or refused, legatee may be a witness.  
1821, 38, § 10.

Attestation good, if such witness die before probate.  
1821, 38, § 11.

If witness be admitted to prove the will, he cannot afterwards claim the legacy.  
1821, 38, § 12.

Nuncupative will.  
1821, 38, § 5.  
2 Greenl. 298.  
8 Greenl. 167.

Wills by soldiers or mariners.  
1821, 38, § 4.

Limitation of proof of such will.

Devise of land, of which testator is disseized.

Devise will pass an estate, subsequently acquired.

Contribution, in case property be taken from a devisee.  
1821, 38, § 13.  
10 Mass. 450.

**SECT. 6.** But if any such subscribing witness shall, before he give his testimony, have been paid, or have accepted or released, or shall refuse to accept, any legacy given to him in the will, upon tender thereof, he shall be admitted as a witness to the execution of the will; the credit of such witness being a subject for the consideration of the court or jury, who may try the cause.

**SECT. 7.** Any such subscribing witness to a will, who shall have died before having refused, received or released any legacy given him by such will, shall be deemed a legal witness to the execution of the same.

**SECT. 8.** No person, to whom any property or beneficial interest, in this chapter declared null and void, or who has refused to receive the same, and has been admitted a witness, concerning the execution of the will or codicil, in which it was given, shall, ever after, receive any benefit from such legacy or bequest, or receive from any person any satisfaction or compensation for the same.

**SECT. 9.** No nuncupative will, excepting those of soldiers and mariners, as hereinafter mentioned, shall be good and allowed, where the property bequeathed shall exceed the value of one hundred dollars, unless proved by the oath of three witnesses who were present at the making; nor, unless the testator, at the time of pronouncing the same, requested the persons present or some of them, to bear witness that such was his will; nor, unless the will was made in the last sickness of the deceased, and at his home, or the place where he had resided for ten days or more, next before the making of the will; except where the person is suddenly taken sick, being from home, and dies before returning to his home.

**SECT. 10.** But any soldier, being in actual military service, and any mariner, being at sea, may dispose of his personal estate and wages, as he might have done before.

**SECT. 11.** No testimony shall be received to prove any testamentary words, as a nuncupative will, after the lapse of six months from the time they were spoken, unless the words or the substance of them were reduced to writing, within six days after they were spoken.

**SECT. 12.** When any person shall devise lands, of which he may not then be seized, but to or for which he has any right of entry, or when, after the making of any devise, the deviser shall be disseized or ousted of the devised premises, they shall, nevertheless, pass to the devisee in like manner, as they would have descended to the heirs of the deviser, if he had died intestate: and the devisee shall have the like remedy for the recovery thereof, either by entry or action, as the heirs might have had.

**SECT. 13.** Any estate, right or interest in lands, acquired by the testator, after the making of his will, and of which he died seized as aforesaid, shall pass thereby, in like manner, as if owned by him at the time of making the will, if such clearly appear by the will to have been the testator's intention.

**SECT. 14.** When any real estate or personal estate, devised, shall be taken from the devisee or legatee by execution, or sold by order of court for payment of the testator's debts, all the other legatees, devisees and heirs shall refund their average proportion of

such loss to the person, from whom such estate shall be taken, so as to make the loss fall equally on such devisees, or legatees, according to the value of the property received by each; subject to the exception in the following section.

**SECT. 15.** If, in such case, the deviser shall, by making a specific devise or bequest, have virtually exempted any devisee or legatee from his liability to contribute with the others, for the payment of the debts; or if he shall, by any provisions in his will, have prescribed or required any appropriation of his estate for the payment of his debts, different from that in the preceding section, the estate shall be appropriated in conformity to the will.

Restriction of this provision. 8 Pick. 478.

**SECT. 16.** Nothing in the two preceding sections shall impair, or affect, the liability of the whole estate of the testator, for the payment of all his debts; but the provision in these sections shall apply only to the marshaling of the assets, as between those holding and claiming under the will.

Qualification of the two preceding sections.

**SECT. 17.** When any child of a testator, born after the father's death, shall have no provision made in his will, he shall take the same share of his father's estate, as he would have been entitled to, if his father had died intestate; and the same shall be assigned him by the judge of probate, as in case of intestate estates; and the same shall be taken, equally, from all the devisees and legatees, in proportion to the value of what they shall respectively receive under the will; unless, in consequence of a specific devise or bequest, or some other provisions in the will, a different apportionment among the devisees and legatees shall be found necessary, to give effect to the intention of the testator, as to that part of his estate, which shall pass by the will.

Provision for posthumous children. 1821, 38, § 14.

**SECT. 18.** Any child, or the issue of any deceased child, not having any devise or legacy to him in his father's or mother's will, shall have the same share of the testator's estate, as he would have been entitled to, if he had died intestate; unless it shall appear that such omission was intentional, or not occasioned by any mistake, or unless such child or grandchild shall have had an equal proportion of the testator's estate bestowed on him, during the life of the testator.

Effect, if an heir have no provision in a will. 1821, 33, § 15. 1 Mass. 145. 3 Mass. 17. 11 Mass. 357. 18 Pick. 162.

**SECT. 19.** If any child or other relation of a testator, having a devise of real or personal estate, made to him in the will, shall die before the testator, leaving lineal descendants, they shall take the estate devised, in like manner as such devisee would have taken it, if he had survived the testator.

Heir of devisee, entitled to the devise. 1821, 33, § 15. 7 Mass. 86.

**SECT. 20.** When any part of the estate of a testator descends to a child or other descendant, by reason of his having no provision made for him in the will, or when it descends to a posthumous child, such child shall be bound to contribute with the devisees and legatees, as provided in section, fourteen, of this chapter, and shall be entitled to claim contribution from them accordingly.

Such share liable to contribution.

**SECT. 21.** When any person liable to contribute toward the discharge of a debt of the testator, according to the provisions of the fourteenth section, shall be insolvent, or unable to pay his just proportion thereof, the others shall be severally liable for the loss occasioned by such insolvency, each one in proportion to the value

Provision, in case a devisee, liable to contribute, be insolvent.

**CHAP. 92.** of the property received by him from the estate of the deceased ; and if any one of the persons, so liable, shall die without having paid his proportion of such debt, his executors and administrators shall be liable therefor, in like manner, as though it had been his proper debt, to the extent of which he would have been liable, if living.

Undevised property, how appropriated.

**SECT. 22.** When any part of the real estate of a testator shall descend to his heirs, not having been devised or disposed of by his will, and his personal estate shall be insufficient for the payment of his debts, the undivided real estate shall be first chargeable with the debts, in exoneration, as far as it will go, of the real estate devised, unless it shall appear from the will, that a different arrangement of his assets for the payment of his debts was made by the testator : in which case, they shall be applied for the purpose, according to the provisions of the will.

Meaning of the words, "real estate."

**SECT. 23.** The words, "real estate," as used in this chapter, include lands, tenements, and hereditaments, and all rights to, and interests therein, which by law are devisable.

Questions under this chapter, how decided.

**SECT. 24.** All cases arising under this chapter, in which devisees or legatees may be required to contribute, to make up the share of any child of the testator, or of the issue of any such child, or, in which contribution is to be made among devisees, legatees and heirs, or any of them, may be decided in an action at law, when the case is such as to allow it ; or may be heard and determined in the probate court, allowing an appeal to the supreme court of probate, as in other cases ; or may be originally brought and finally determined in the supreme judicial court, as a court of equity jurisdiction.

Effect of probate of a will. 16 Mass. 433.

**SECT. 25.** No will shall be effectual to pass real or personal estate, unless it shall have been duly proved and allowed in the probate court ; and the probate of such will shall be conclusive, as to the due execution thereof.

Construction of devises.

**SECT. 26.** Every devise of land, in any will hereafter made, shall be construed to convey all the estate of the devisor therein, which he could lawfully devise, unless it shall clearly appear by the will, that the devisor intended to convey a less estate.

## CHAPTER 93.

### OF TITLE BY DESCENT.

- SECT. 1.** How lands of an intestate descend.  
**2.** Degrees, how computed.  
**3.** Heirship of an illegitimate child.  
**4.** Descent of his property.  
**5.** Descent of estate of an alien, afterwards naturalized.  
**6.** Provision, if he die, after filing his intention.  
**7.** Certain property, not to escheat.  
**8.** What is an advancement.

- SECT. 9, 10.** To be considered part of the estate.  
**11.** Effect, if it exceed the child's share.  
**12.** Effect upon distribution of real or personal estate.  
**13.** If such heir die, how advancement is to be reckoned.  
**14.** Tenancy by curtesy or dower, not affected.

- SECT. 15. How personal estate shall descend. SECT. 19. If no kindred.
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| 16. Personal estate of a married woman. | 20. If no husband, widow nor kindred.                        |
| 17. If intestate leave widow and issue. | 21. Debt due from an heir, to be a lien on the heir's share. |
| 18. If no issue.                        | 22. Proceedings in such case.                                |

**SECTION 1.** When any person shall die, seized of any lands, tenements or hereditaments, or any right thereto, or entitled to any interest therein, in fee simple, or for the life of another, not having lawfully devised the same, the same shall descend, subject to his debts, in the following manner :

*First.* In equal shares to his children, and to the lawful issue of any deceased child, by right of representation ; and, when there is no child of the intestate at the time of his death, his estate shall descend to all his lineal descendants ; and if they are all in the same degree of kindred to the intestate, they shall share the estate equally ; otherwise, they shall take according to the right of representation.

*Secondly.* If he shall have no issue, his estate shall descend to his father.

*Thirdly.* If he shall leave no issue nor father, his estate shall descend in equal shares to his brothers and sisters, and to the children of any deceased brother or sister, by right of representation ; provided, if he shall leave a mother also, she shall take an equal share with his brothers and sisters.

*Fourthly.* If the intestate shall leave no issue, nor father, and no brother or sister, living at his death, his estate shall descend to his mother, to the exclusion of the issue, if any, of deceased brothers and sisters.

*Fifthly.* If the intestate shall leave no issue, nor father, mother, brother or sister, his estate shall descend to his next of kin in equal degree ; excepting when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming under an ancestor more remote.

*Sixthly.* Provided however, that if any person shall die, leaving several children, or leaving one child, and the issue of one or more others, and any such surviving child shall die under age, not having been married, all the estate, which came to the deceased child, by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of such other children, who shall have died, by way of representation ; and provided also, that when the issue or next of kin to the intestate child, to whom the estate came by inheritance from his father, as above stated, are all in the same degree of kindred, they shall share the said estate equally ; otherwise, they shall take according to the right of representation.

*Seventhly.* If the intestate shall leave no kindred, his estate shall escheat to the state.

**SECT. 2.** The degrees of kindred shall be computed, according to the rules of the civil law ; and the kindred of the half blood shall inherit equally with those of the whole blood in the same degree.

How lands of an intestate descend. 1821, 38, § 17.

Children.

Father.

Brothers and sisters, and mother. 3 Mass. 13. 12 Mass. 490. 14 Maine, 309.

Mother.

Next of kin.

Proviso.

Escheat. 3 Pick. 221.

Degrees, how computed. 1821, 38, § 17.



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Heirship of an illegitimate child.  
1838, 338.

**SECT. 3.** Every illegitimate child shall be considered, as an heir of the person, who shall in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child, and shall, in all cases, be considered as heir of his mother, and shall inherit his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral; unless, before his death, his parents shall have intermarried and had other children, and his father, after such marriage, shall have acknowledged him as aforesaid, or adopted him into his family; in which case, such child and all the legitimate children shall be considered as brothers and sisters, and, on the death of either of them, intestate and without issue, the others shall inherit his estate, and he theirs, as provided in the first section of this chapter, in like manner as if all the children had been legitimate; saving to the father and mother, respectively, their rights in the estates of all the said children, as provided in the first section, in like manner as if all had been legitimate.

Descent of his property.  
1838, 338.  
4 Pick. 93.

**SECT. 4.** If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother, or, in case of her decease, to her heirs at law.

Descent of estate of an alien, afterwards naturalized.  
1834, 105, § 1.

**SECT. 5.** Any alien, who has purchased real estate, and afterwards become naturalized, shall have power to hold the same in fee, if no claim shall have been interposed by the state, previous to his naturalization; and, in case he should make no disposition of it in his life time, on his dying seized thereof, or of any right or interest, therein or thereto, the same shall descend to his heirs, subject to his debts, in like manner as if he were a native born citizen.

Provision, if he die after filing his intention.  
1834, 105, § 2.

**SECT. 6.** Any alien, who shall have filed, in any court of record, a declaration of his intention to become a citizen of the United States, and shall die before the expiration of three years, if during that time he shall have become seized and possessed of any real estate, the same shall descend to his heirs, or follow the disposition thereof in his will, in like manner, as if he were a native citizen.

Certain property not to escheat.  
1834, 105, § 3.

**SECT. 7.** No title or claim of any citizen of this state, who was in actual possession of any lands, on or before the first day of January, eighteen hundred and thirty four, shall escheat or be defeated, on account of the alienage of any person, through or from whom such title or claim shall have been derived.

What is an advancement.  
1821, 51, § 40.  
2 Pick. 337.  
3 Pick. 450.  
4 Pick. 21.  
22 Pick. 508.

**SECT. 8.** All gifts and grants of real or personal estate shall be deemed to have been made, in advancement, to a child or grand child, if they are expressed in such gift or grant to be so made, or charged by the intestate, in writing, as an advancement, or acknowledged, in writing, as such by the child or grand child.

To be considered part of the estate.  
1821, 51, § 40.

**SECT. 9.** Any real or personal estate, thus given, by way of advancement, to a child or grand child, shall be considered as a part of the intestate's estate, so far as it regards the division and distribution thereof, and shall be taken by such child, towards his share of the intestate's estate.

Same subject.  
1821, 51, § 40.

**SECT. 10.** The value of the estate advanced, if expressed by the intestate in his gift or charge, or in the acknowledgment of the

child or grand child, shall be considered the value, to be allowed in the distribution of the estate; if no value be so expressed, then it shall be estimated according to its value, when given.

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SECT. 11. If the amount of the advancement shall exceed the share of such child or grand child, he shall be excluded from any further portion, in the division and distribution of the estate; but he shall not be required to refund any part of such advancement; and, if the amount so received shall be less than his share, he shall be entitled to as much more as will make all the shares equal.

Effect, if it exceed the child's share.

SECT. 12. If any such advancement shall be made in real estate, the value thereof shall, for the purposes of the preceding section, be considered as part of the real estate to be divided; and if it be in personal estate, it shall be considered as part of the personal estate; and if, in either case, it shall exceed the share of real or personal estate, respectively, that would have come to the party so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate, as will make his whole share equal to those of the other heirs, who are in the same degree with him.

Effect upon distribution of real or personal estate.

SECT. 13. If any child or grand child, so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate; and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, as so much received towards their share of the estate, in like manner as if the advancement had been made directly to them.

If such heir die, how advancement is to be reckoned.

SECT. 14. Nothing contained in this chapter shall affect the title of a husband, as tenant by the curtesy, nor that of the widow, as tenant in dower.

Tenancy by curtesy or dower, not affected. 1821, 38, § 18.

SECT. 15. When any person shall die possessed of any personal estate, or right or interest therein, not lawfully disposed of by his will, the same, after allowing to the widow, if any, her wearing apparel, according to the degree and estate of her husband, and such further necessaries, as the judge of probate shall order, having regard to the state of the family, and also such sum, when she rejects the provision made for her in her husband's will, as may be allowed to her according to the eighteenth section of chapter, one hundred and eight, shall first be applied to the payment of the debts of the intestate, and the charges of his funeral, and settlement of his estate; and the residue shall be distributed to the same persons, in the same proportion, to whom the real estate shall descend, but subject however to the provisions contained in the following sections.

How personal estate shall descend. 1821, 38, § 19.

SECT. 16. If the intestate were a married woman, the husband shall be entitled to the whole of such residue.

Personal estate of a married woman. 1821, 38, § 19.

SECT. 17. If the intestate leave a widow and issue, the widow shall be entitled to one third part of said residue.

If intestate leave widow and issue. 1821, 38, § 19. 1 Pick. 157.

SECT. 18. If he leave no issue, then she shall be entitled to one half part thereof.

If no issue. 1821, 38, § 19.

SECT. 19. If he leave no kindred, the widow shall be entitled to the whole of said residue.

If no kindred. 1821, 38, § 19.

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If no husband, widow, nor kindred. 1821, 38, § 19. Debt due from an heir, to be a lien on the heir's share.

Proceedings in such case.

**SECT. 20.** If there be no husband, widow nor kindred of the intestate, the whole shall escheat to the state.

**SECT. 21.** When any person shall die intestate, whose estate shall not be insolvent, and any heir, to whom a share of such estate, whether real or personal, by law descends, was indebted to the intestate at the time of his decease, in such case the debt, so due, shall be and remain a lien upon such share until the debt shall be paid; which lien shall have priority to any attachment on said share.

**SECT. 22.** The administrator on such estate may realize the benefit of such lien on the descended share of such heir, by an attachment of the same in a suit, brought within two years after the grant of administration, for the recovery of the debt, and a levy and satisfaction of the execution issued on the judgment in such suit, within thirty days after such judgment; and, in such action, if the heir has any claim against the estate, he shall file the same by way of set off; or, if the heir should claim to be a creditor of the estate, and shall bring his action for the recovery of the same against the administrator within said two years, then the administrator may file the claim of the intestate against such heir, by way of set off; and in this manner both claims shall be settled, and the balance be established.

**CHAPTER 94.****OF TITLE TO REAL ESTATE TAKEN BY EXECUTION.**

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| <p><b>SECT. 1, 2.</b> What interests in real estate may be levied upon.</p> <p><b>3.</b> Exception of burying ground.</p> <p><b>4, 5, 6.</b> Levy of execution, and appraisal.</p> <p><b>7.</b> Appraisers' certificate to describe the estate.</p> <p><b>8.</b> How appraised, if in several parcels.</p> <p><b>9.</b> Majority of appraisers to decide.</p> <p><b>10.</b> What shall pass by the levy.</p> <p><b>11.</b> Levy on property held in common.</p> <p><b>12.</b> Levy on land, which cannot be set off by metes and bounds.</p> <p><b>13.</b> Levy on mills and privileges.</p> <p><b>14.</b> Levy on a life estate.</p> <p><b>15.</b> Levy on land under a lease.</p> <p><b>16.</b> Levy on part of a reversion.</p> <p><b>17.</b> Delivery of seizin and possession.</p> <p><b>18.</b> Same, when levy is on a right of entry. Proceedings, when the debt has been assigned.</p> <p><b>19.</b> Return, and record of execution and levy.</p> <p><b>20, 21.</b> Effect, if not recorded.</p> | <p><b>SECT. 22.</b> When creditor may waive the levy.</p> <p><b>23.</b> Creditor may have scire facias, if title fail.</p> <p><b>24.</b> Form of officer's return.</p> <p><b>25.</b> When debtor may redeem.</p> <p><b>26.</b> Mode of deciding the sum due.</p> <p><b>27.</b> Remedy, if creditor will not release.</p> <p><b>28.</b> Equity process, to adjust claims.</p> <p><b>29.</b> Costs in such cases.</p> <p><b>30.</b> Proceedings, when levy is on rents and profits.</p> <p><b>31.</b> Mode of setting off land under mortgage.</p> <p><b>32.</b> Remedy, if mortgage was larger than was estimated.</p> <p><b>33.</b> Time of redemption. Remedy, if debtor pay the mortgage.</p> <p><b>34.</b> Mortgages, and lands of banks and other corporations, may be sold on execution.</p> <p><b>35.</b> No conveyance or assignment by the corporation, to be valid, after seizure.</p> <p><b>36.</b> Sale of possessory interests, or equities of redemption.</p> |
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## SECT. 37. Notices of sale.

38. Sale may be adjourned.  
 39. Proceedings at sale, and deed.  
 40. Time of seizure on execution.  
 41. Right of redemption.  
 42. Remedy, if purchaser will not re-lease.  
 43. Right of redeeming an equity may be seized and sold.  
 44. Charges of levy, to be added to the execution.

## SECT. 45. Rights of heirs and legal representatives.

46. Levy of executions on estates of deceased persons.  
 47. Effect of redemption thereof by heirs.  
 48. Right of dower not affected by levy.  
 49. Levy of executions in favor of the state.

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SECTION 1. All the real estate of a debtor, in possession, reversion or remainder, or fraudulently conveyed, or of which he had been colorably or fraudulently disseized, for the purpose of defrauding his creditors, and all rights of entry into land, and rights of redeeming land mortgaged, may be taken in execution for his debts, in the manner mentioned in this chapter.

Interests in real estate, liable to be levied upon. 1821, 52, § 1. 14 Mass. 20.

SECT. 2. All estates tail may be taken in execution for the debts of the tenants in tail, in the same manner as estates in fee simple; and the person, lawfully holding such premises under the execution, shall have an estate in fee simple.

Same subject. 1821, 52, § 1.

SECT. 3. The preceding sections shall not be construed to include any piece of land, not exceeding half an acre, appropriated by any number of individuals, as a place of burial, constantly inclosed with a fence, and not used for the purposes of cultivation; a description of which, under the hands of the individuals, who appropriated the same, attested by two disinterested witnesses, shall have been recorded in the registry of deeds in the county, or registry district, where the land lies.

Exception of burying ground. 1835, 118, § 1.

SECT. 4. Whenever a creditor thinks proper to have his execution levied on the real estate of the debtor, the officer, holding the execution, and empowered to serve it, shall cause such estate to be appraised by three discreet and disinterested men, one to be chosen by the creditor, one by the debtor, and the third by such officer; or, if the debtor shall neglect to appoint one, after notice given to him by the officer, if the debtor or his attorney be living in the county, where the land lies, the officer shall appoint one for him; and such appraisers shall be sworn before a justice of the peace, faithfully and impartially to appraise such real estate, as shall be shown to them, to be taken by said execution; and such justice shall make his certificate on the back of said execution, of his having administered such oath.

Levy of execution, and appraisal. 1821, 60, § 27. 7 Mass. 71. 8 Mass. 113. 4 Greenl. 372. 7 Greenl. 146. 16 Maine, 209. 2 Pick. 382, 510. 4 Pick. 243. 9 Pick. 35. 12 Pick. 47. 13 Pick. 495.

SECT. 5. After the officer has taken land in execution, and given notice to the debtor thereof, if he or his attorney be residing in the same county, and allowed him a reasonable, specified time, within which to appoint an appraiser, as mentioned in the preceding section, he shall then proceed, without unnecessary delay, to have the estate appraised, and the levy completed; and it shall be considered as made, when the land is taken in execution; and the subsequent proceedings and return shall be valid, though made and done after the return day, or after the removal or other disability of the officer.

Same subject. 6 Greenl. 162. 8 Greenl. 207. 16 Maine, 151.

SECT. 6. The appraisers shall proceed, with the officer, to view

Same subject. 1821, 60, § 27.

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8 Mass. 411.  
6 Greenl. 162.  
2 Pick. 331, 413,  
561.  
7 Pick. 49.  
Appraisers' certificate to describe the estate.  
1821, 60, § 27.  
9 Mass. 92.

How appraised, if in several parcels.  
7 Mass. 71.

Majority of appraisers to decide.  
8 Mass. 284.  
14 Mass. 143.

What shall pass by the levy.

Levy on property, held in common.  
1821, 60, § 27.  
12 Mass. 343.  
21 Pick. 283.

Levy on land, which cannot be set off by metes and bounds.  
1821, 60, § 23.

Levy on mills and privileges.  
1821, 60, § 29.

Levy on a life estate.  
14 Mass. 378.  
17 Mass. 439.  
5 Greenl. 479.  
15 Pick. 23.

and examine the land, so far as may be necessary to a just estimate of its value; and the description and appraisement of the land shall be indorsed on the execution, and signed by them.

**SECT. 7.** The nature of the estate appraised, whether in severalty or undivided, a fee simple or less estate, in possession, reversion or remainder, shall be described either by metes and bounds, or such other mode, that the same may be distinctly known and identified; and this description may be referred to and adopted by the officer, as a part of his return.

**SECT. 8.** The appraisers may appraise several parcels of land separately, or the whole together: and where several pieces of land are taken at different times, there may be distinct sets of appraisers, if more convenient for those concerned.

**SECT. 9.** The levy of the execution shall be valid, though the certificate of appraisement be signed by only two of the appraisers, if it appear by the return that the third was sworn, and acted with the others under the appointment.

**SECT. 10.** All the debtor's interest in the premises shall pass by the levy, unless it be larger than the estate, mentioned in the appraisers' description.

**SECT. 11.** When the debtor's estate is held in joint tenancy, or in common with others, the whole estate must be described by the appraisers, and the debtor's share or part thereof, so held, be so stated by them; and the whole, or such part of the debtor's interest, as may be necessary to satisfy the execution, may be taken, and thereafter held in common with the cotenants.

**SECT. 12.** When the estate, levied upon, cannot be set out by metes and bounds, or the description before mentioned, the execution shall be extended on the rents of such estate, and the officer shall give seizin thereof to the creditor, and cause the person in possession to attorn and become tenant to such creditor, and pay the rent to him accordingly; or, on his refusal so to do, the officer shall turn him out of possession, and give seizin and possession to the creditor, until redeemed by such debtor, in the manner hereinafter provided.

**SECT. 13.** When the premises, to be levied on, consist of a mill, mill privilege, or other real estate, which cannot be divided without damage to the whole, and which is more than sufficient to satisfy the execution, it may be levied in the manner, prescribed in the preceding section, or upon such individual part of the whole, as may be sufficient to satisfy the execution; and, in the certificate of the appraisers, the whole of the property must be described, of which the undivided portion is taken.

**SECT. 14.** When an execution is levied on a life estate, the value thereof may be estimated by the appraisers, and the same may be taken and set off to the creditor, like other real estate; or the execution may be levied on the rents and profits, at the creditor's election; in which latter case, the appraisers shall estimate the rents and profits, for such length of time, as shall be sufficient to satisfy the execution; and for such term of time, the premises shall be set off to the creditor, if the life shall so long continue; computing interest on the sum due on the execution, and deducting the rents and profits, as so much paid, from time to time, when the

rents and profits fall due; and if the life estate shall expire before the end of the term fixed by the appraisers, the creditor may have a new action on the judgment to recover the balance due. CHAP. 94.

SECT. 15. When the premises levied on are under lease to a third person, and the reversion of the whole is taken on any execution, the lessee shall pay the rent to the creditor from the time of the levy. Levy on land under a lease.

SECT. 16. When the reversion of a part only of the premises is taken, the appraisers shall determine what proportion of the whole annual rent shall be paid to the creditors; and the lessee shall be bound to pay the same to him accordingly. Levy on part of a reversion.

SECT. 17. The officer, serving the execution, shall deliver seizin and possession of the premises taken, to the creditor or his attorney, so far as the nature of the estate taken, and the title of the debtor will admit; where a remainder, reversion or right of redemption is taken, the officer shall not oust the debtor, who is in possession, but only assign to the creditor the debtor's right therein, and may make his return accordingly. Delivery of seizin and possession. 1821, 60, § 27. 4 Mass. 402. 13 Mass. 361.

SECT. 18. When an execution is levied on land, into which the debtor has, or is supposed to have, a right of entry, and of which any other person is then seized, the officer shall deliver to the creditor a momentary seizin and possession of the land, so far as to enable the creditor to maintain an action therefor, in his own name and on his own seizin; but he shall not actually expel and keep out the tenant then in possession, against his will. Same, when levy is on a right of entry.

If, previously to the levy of any execution on real estate, the nominal execution creditor shall have assigned the debt, upon which the judgment was recovered, to a third person for a good and valuable consideration, the nominal creditor shall be deemed to hold the real estate, levied upon, in trust for the assignee, who shall be entitled to a conveyance of the same from the nominal creditor, to be enforced by the supreme judicial court, on a bill in equity. Proceedings, when the debt has been assigned.

SECT. 19. The officer shall return the execution with a certificate of his doings indorsed thereon, into the clerk's office, to which it is returnable; and shall also, within three months after the completion of the levy, cause the execution and return thereon to be recorded in the registry of deeds for the county, wherein the land lies. Return, and record of execution and levy. 1821, 60, § 27. 1825, 309. 15 Mass. 200. 5 Greenl. 197. 3 Pick. 331. 5 Pick. 170. 13 Pick. 477.

SECT. 20. If the execution and levy are not recorded, as prescribed in the preceding section, it shall be void against any creditor, who shall have attached or taken in execution the same premises, without notice of such levy; or against any person who shall have purchased them in good faith, and for a valuable consideration, without such notice; but, if the levy is recorded, though after the expiration of said three months, it shall be valid and effectual against any conveyance, attachment or levy, made after such recording. Effect, if not recorded. 3 Mass. 313. 8 Mass. 224.

SECT. 21. The levy of an execution and delivery of possession, though neither returned nor recorded, as aforesaid, shall be so far valid against the creditor, that he shall not be permitted to waive the levy, and to have a new execution of his judgment, except as provided in the following section. Same subject. 15 Mass. 157. 17 Mass. 453. 2 Greenl. 232.

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When creditor  
may waive the  
levy.  
14 Mass. 378.

**SECT. 22.** If, before the execution is returned or recorded, it should appear, that there is any error or defect in the proceedings, which would render the levy void, or that the estate levied upon was not the property of the debtor, or not liable to be seized on execution, or that, for any reason, it cannot be held thereby, the creditor may waive the levy; and it shall be considered null and void, and he may resort to any other remedy for satisfaction of the judgment.

Creditor may  
have scire fa-  
cias, if title fail.  
1823, 210.  
14 Mass. 57.  
5 Greenl. 103.  
3 Fairf. 303.

**SECT. 23.** If, after the execution is returned or recorded, it should appear to the creditor, that the estate levied upon was not the property of the debtor, or not liable to be seized on execution, or that it cannot be held thereby, the creditor may sue out of the clerk's office of the court, from which the execution issued, a writ of scire facias to the debtor, requiring him to shew cause, why an alias execution should not be issued on the same judgment; and if the debtor, after having been duly summoned, shall not shew sufficient cause to the contrary, the levy of the former execution may be set aside, and an alias execution shall be, thereupon, issued for the amount then due on the original judgment, but without interest or further costs; but, if it shall appear to the court, that the creditor had no just cause for such suit, the debtor shall recover his costs.

Form of officer's  
return.  
1821, 60, § 27.  
6 Greenl. 106.  
7 Greenl. 14,  
146.  
1 Fairf. 100.  
15 Maine, 73,  
153.  
4 Pick. 243.  
15 Pick. 23.

**SECT. 24.** The officer shall state in his return, on the execution, substantially the following facts:

*First.* The time when the land was taken in execution;

*Second.* How the appraisers were appointed;

*Third.* That they were duly sworn;

*Fourth.* That they appraised and set off the premises, after viewing the same, at the price specified;

*Fifth.* That the officer delivered seizin and possession to the creditor or his attorney, or assigned the same to him, as in case of remainder or other incorporeal estate;

*Sixth.* The description of the premises, unless they are sufficiently described in the certificate of the appraisers;

*Seventh.* If the appraisement is signed by only two of the appraisers, he must state that all three were present and acted therein.

When debtor  
may redeem.  
1821, 60, § 30.  
1 Greenl. 257.  
5 Greenl. 390.

**SECT. 25.** When lands are taken and set off on execution, the debtor may redeem the same at any time within one year after the levy, by paying or tendering to the creditor the sum, at which they were appraised, and interest from the time of the levy, with the reasonable expenses incurred in improving the same, or in repairs, after deducting the rents and profits received by the creditor, or which he might have received, and with which he is chargeable; and the creditor shall thereupon, by his deed prepared at the debtor's expense, release to said debtor all his right and title to the premises levied on.

Mode of de-  
ciding the sum  
due.  
1821, 60, § 30.

**SECT. 26.** The amount due for redemption may be ascertained, at the desire of the debtor, by three justices of the peace, chosen thus; one by the debtor, a second by the creditor, if he inclines to choose him, if not, he also may be chosen by the debtor, and the third chosen by the two justices, as aforesaid chosen; and, after a hearing of the case before all three of the justices, they, or any two of

them shall make and sign a certificate of the sum, that shall be adjudged due and payable for the redemption of the premises, which shall be final and conclusive, between the parties; and the debtor may tender that sum, which shall be valid and effectual, though he may have made a tender before, of a different sum.

**SECT. 27.** If, on tender of the sum due for redemption, whether it has been adjudicated as aforesaid, or not, the creditor shall not release the premises within ten days next following, the debtor may recover the same by writ of entry on his own seizin; but, before entry of judgment, he shall bring into court, for the use of the creditor, the money so tendered.

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Remedy, if creditor will not release. 1821, GO, § 30. 5 Greenl. 390.

**SECT. 28.** Instead of a writ of entry, the debtor may bring a bill in equity for redemption, in the supreme judicial court, at any time within one year after the levy, whether he has made any tender or not; setting forth, in such bill, his offer to pay such sum as may be found due to the said creditor; and the court shall ascertain the amount due, unless the same shall have been adjudged, by three justices of the peace, as before mentioned, and require the debtor to bring such amount into court for the creditor's use; and the debtor thereupon shall be entitled to a decree in his favor, and a writ of possession, for his seizin of the premises.

Equity process, to adjust claims.

**SECT. 29.** In the preceding case, the court may award costs for either party, as justice may require; excepting, that the creditor shall never be subjected to costs, unless he has unreasonably refused, on request, to render an account of rents and profits received by him, and expenses incurred by him in improvements and repairs, or unless he had refused to execute to the debtor a deed of release of the premises for the term of ten days, on tender of a sufficient sum by him; or excepting also, that if the creditor shall, before the filing of the bill in equity, have tendered such a deed of release to the debtor, and in his answer, shall rely on such tender, and bring the same into court, to be delivered to the debtor, he shall recover his costs.

Costs, in such cases.

**SECT. 30.** The provisions of the preceding section shall be the rule of proceeding in those cases, where execution may have been levied on the rents and profits of an estate for life, in respect to the redemption of such rents and profits.

Proceedings, when levy is on rents and profits.

**SECT. 31.** Any right of redeeming mortgaged premises may be taken and set off on execution for the mortgager's debts, in like manner, as though they were not mortgaged, excepting that the appraisers shall deduct the amount of the mortgage debt, when known, from the estimated value of the premises, and the sum so deducted shall be stated in the return on the execution.

Mode of setting off land under mortgage. 15 Pick. 23.

**SECT. 32.** If, after the levy of an execution in the usual form, it should be ascertained that there was a mortgage upon the premises, not known to the creditor at the time of the levy; or if the levy was made in the manner prescribed in the preceding section, but the full amount, due on the mortgage, was not deducted as therein required; still, the creditor shall hold the premises in virtue of the levy, and may recover of the debtor, in a new action, the amount he shall pay on account of such unknown mortgage, or so much thereof as should have been, but was not, deducted or allowed for in the appraisement.

Remedy, if mortgage was larger than was estimated.



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Time of redemption. Remedy, if debtor pay the mortgage.

Mortgages and lands of banks and other corporations may be sold on execution. 1821, 60, § 13, 14, 15. 1823, 221, § 2.

No conveyance or assignment by the corporation to be valid, after seizure. 1821, 60, § 16.

Sale of possessory interests, or equities of redemption. 1821, 60, § 17, 19. 16 Mass. 402. 3 Pick. 250.

Notices of sale. 1821, 60, § 17. 9 Mass. 242. 7 Greenl. 376. 1 Pick. 351.

SECT. 33. Any estate levied upon in the manner, prescribed in the two preceding sections, may, at any time within one year after the levy, be redeemed, in the same manner, as though the estate had not been under mortgage, at the time of the levy; and, if the debtor shall afterwards pay the amount due on such mortgage, he may recover the same of the creditor levying as aforesaid, in an action for money had and received.

SECT. 34. The lands belonging to any manufacturing corporation, and the lands of any bank, and all the title and interest which any manufacturing company or bank has in lands, which have been, or may be, mortgaged for security of any debt due or assigned to such corporation or bank, may be seized and sold on execution at public auction; and the officer, having such execution, shall first give notice of the time and place of sale, fourteen days previous thereto, in two or more public places in the town or place where the lands lie, and also in some newspaper printed in the county, if there be any, otherwise, in the newspaper published by the printer to the state; and such officer may give an effectual deed of conveyance of such lands, titles, and interests; and the debts, secured to such corporation by such mortgage, and then due, shall pass to the purchaser of the mortgaged premises; and he or his legal representatives may, in his or their own name, recover such debt or such premises; and in such action a copy of the mortgage deed, duly certified by the register of deeds, shall be considered prima facie evidence of such deed, and of the note or obligation on which it is founded, and that the same were remaining due and unsatisfied at the time of trial; and the cashier or clerk of such bank or corporation shall, on reasonable request by the officer serving the execution, furnish him with a certified copy of such note or obligation, and a statement of all payments made thereon by such debtor.

SECT. 35. No conveyance or transfer of such mortgage, or of the debt thereby secured, made by such bank or company, after notice filed in the registry of deeds for said county, or otherwise given to the party to be affected thereby, of the seizure thereof on execution by such officer, for the purpose of sale, shall have any force or validity against the purchaser of such lands or interest, at auction as aforesaid.

SECT. 36. All the right, title or interest any person owns, holds or claims, in virtue of a possession and improvement of lands, as expressed and described in the chapter on real actions, being chapter, one hundred and forty five, and also all rights of redeeming mortgaged real estate, may, at the election of the creditor, be taken and sold on execution, as hereinafter prescribed, instead of being appraised and set off on execution to the creditor; and the officer shall stand accountable for the surplus of the proceeds of the sale, if any, after satisfying the execution and legal charges.

SECT. 37. In such case the officer shall give written notice of the time and place of sale, to the debtor, in person, or by leaving the same at his last and usual place of abode, if he is known to be an inhabitant of the state, and shall also cause notifications thereof to be posted in some public place in the town where the land lies, and in two adjoining towns, if there be so many; provided, that

when the land is not within the limits of any incorporated town, notice shall be posted up in two public places in the shire town of the county, in which said land lies, in lieu of the posting aforesaid, all which shall be done thirty days at least before the day of sale; and shall also cause an advertisement of the time and place of sale, to be published three weeks successively before the sale, in some public newspaper, printed in the county where the land lies, if there be any such, if not, then in the state paper, if the execution debtor be not a resident of the county: provided, that if such debtor be not an inhabitant of the county where the land lies, the notice here required to be given to him shall be deemed sufficient, if forwarded to him by mail.

**SECT. 38.** When the officer shall deem it for the interest of all parties concerned to postpone the auction for want of purchasers, or other sufficient cause, he may adjourn the sale for any time not exceeding seven days, and so from time to time, for like good cause, until the sale shall have been made; giving notice of each adjournment, by public proclamation, made at the same time.

Sale may be adjourned.  
1821, 60, § 17.

**SECT. 39.** The right to redeem shall be sold by the officer, at public auction, to the highest bidder, and he shall execute and deliver to the purchaser a good and sufficient deed thereof; which, being recorded in the registry of deeds for the county where the land lies, within three months of the sale, shall convey to the purchaser all the title, which the debtor had in the premises; and, if the highest bidder at any such sale, shall refuse, or be unable to pay the sum, for which such right in equity was sold, upon the demand of the officer, said officer shall, immediately, set up such right in equity again, and proceed to sell in the same manner, as though no bid had been previously made; and, in case said equity, at such second sale, shall not be sold for so great a sum as that, for which it was stricken off at the first sale, the person, to whom it was so struck off at the first sale, shall be accountable to the officer for the difference; and the officer may sue for and recover such difference, to be indorsed on said execution, or paid over to the debtor in case said execution shall be fully satisfied.

Proceedings at sale, and deed.  
1821, 60, § 17.  
7 Mass. 138.  
9 Mass. 101.  
12 Mass. 514.  
13 Mass. 483.  
8 Greenl. 246.  
3 Pick. 250.

**SECT. 40.** The seizure of the right, on the execution, shall be considered as made on the day, when the notice of the intended sale was given, as above prescribed, whether to the debtor, or by posting up notice, or by advertising in a newspaper, and hold the estate by force of the attachment, if any had been made thereon, though the levy should not be completed within thirty days next after the judgment; and the subsequent proceedings, and the return shall be valid, although made and done after the return day, or after the removal or other disability of the officer.

Time of seizure on execution.  
16 Maine, 151.

**SECT. 41.** The right of redemption, being so sold, may be redeemed by the debtor from the purchaser, or the person holding under him, at any time within one year after such sale, by paying or tendering the sum for which the same was sold, and on like conditions as to improvements and repairs and rents and profits, as in case of redemption of lands, appraised and set off on execution; and the person holding the right shall release the same to the debtor, the deed to be prepared at the expense of the debtor.

Right of redemption.  
1821, 60, § 18,  
19.  
2 Greenl. 339.  
1 Fairf. 161.  
1 Pick. 485.  
3 Pick. 48.

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Remedy, if purchaser will not release.

**SECT. 42.** If the purchaser, or person holding under him, shall not, within ten days after a tender by the debtor, release to him the right of redemption as before provided, or if there has been no tender, the debtor may have the same remedy for recovering his right of redemption, as is provided in like cases for the redemption of land mortgaged.

Right of redeeming an equity may be seized and sold. 1833, 87. 12 Mass. 387.

**SECT. 43.** The right which any debtor may have of redeeming from the purchaser any equity of redemption, which may have been sold on execution against such debtor, and also the right which any such debtor may have, of redeeming, from a judgment creditor, any real estate, which may have been appraised, and set off on execution against such debtor, may be attached on mesne process, and sold on execution, and the same proceedings shall be had in respect to the sale and conveyance of either of said rights, as in the sale of an equity of redeeming mortgaged estate, and the purchaser shall have and exercise all the rights and remedies, which the debtor might, if no sale of it had been made; provided, however, that the debtor may have the same right of redeeming it, as is allowed by law, of redeeming mortgaged real estate. And the lien created by any attachment of such real estate or equity of redemption, before such sale or setting off on execution, shall continue and have effect upon the right of redeeming the same as aforesaid, in the order in which such attachments have been made, prior to any attachments, which may be made thereon, subsequently to such sale or setting off on execution.

Charges of levy to be added to the execution.

**SECT. 44.** The lawful charges and fees of levying an execution, in any of the above mentioned modes, shall be added to the amount of the execution, and, in setting off, and the sale, of estates on execution, shall be considered as part thereof, and also in the redemption of the estate.

Rights of heirs and legal representatives.

**SECT. 45.** Every thing in this chapter, which a creditor or debtor is required to do, or may do, may be done by their respective heirs or assigns, executors or administrators, as the case may be, or by any person lawfully claiming under them, respectively.

Levy of executions on estates of deceased persons. 1821, 52, § 24. 4 Mass. 150.

**SECT. 46.** The real estate of a deceased testator or intestate may be taken in execution, on a judgment recovered against his lawful executor or administrator, for the proper debt of the deceased; and shall be appraised and set off or sold and redeemed, in like manner as if the same estate had been levied on, in the life time of such testator or intestate.

Effect of redemption thereof by heirs.

**SECT. 47.** When the estate of a deceased person has been set off, or sold on execution, and has been redeemed by the heirs or devisee, or the assigns of either, as provided in the preceding section, the same shall not again be taken in execution for any other debts of the deceased, or in any manner be liable therefor.

Right of dower, not affected by levy. 1821, 60, § 27.

**SECT. 48.** Every widow shall be entitled to dower, in lands taken by execution from her husband, or by execution on a judgment against his executors or administrators, in like manner as though conveyed by the husband.

Levy of executions in favor of the state. 1821, 60, § 33.

**SECT. 49.** When real estate is taken to satisfy an execution, issued on a judgment in the name, or for the use of the state, for any sum of money, a writ of execution, in common form, shall issue,

and be directed to the proper officer, and the lands of such judgment debtor may be taken on such execution and sold at auction; but, before proceeding to sell, the officer shall give notice of the intended sale, in like manner as is prescribed in the thirty seventh section of this chapter; except, that such notice shall be published also in the newspaper published by the printer to the state, and that the last publication in both newspapers shall be six days before the sale; and the officer, making such sale, shall make and execute to the purchaser a sufficient deed of the land sold; and the debtor shall have the same rights to redeem the same, in like manner, and on the same conditions, as a judgment debtor has, to redeem lands taken and set off on execution.

## CHAPTER 95.

### OF ESTATES IN DOWER, AND BY CURTESY, AND AT WILL.

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| <p>SECT. 1. Of what lands a woman is dowable.</p> <p>2. Of what she is not dowable.</p> <p>3. When judge of probate may assign dower.</p> <p>4. Mode of proceeding.</p> <p>5. Special assignment, in certain cases.</p> <p>6. Rights of widow, before assignment.</p> <p>7. Widow of naturalized alien.</p> <p>8. Proceedings, to recover dower by suit.</p> <p>9, 10, 11. How dower may be barred.</p> <p>12. Widow may waive jointure, in certain cases.</p> | <p>SECT. 13. She may waive provision in her husband's will.</p> <p>14. Remedy, if she be evicted of her dower.</p> <p>15. When dowable of an equity of redemption.</p> <p>16. Penalty, if she commit waste.</p> <p>17. Right of widow to remain in her husband's house.</p> <p>18. Tenancy by curtesy.</p> <p>19. Notice, to determine tenancy at will.</p> <p>20. Limitation of the preceding section.</p> |
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SECTION 1. Every woman shall be entitled to her dower, at common law, in the lands of her husband, with the exception hereafter mentioned, to be assigned to her after his decease, unless lawfully barred thereof.

SECT. 2. A widow shall not be endowed of wild lands, of which her husband shall die seized, nor of wild lands conveyed by him, although they should be cleared afterwards; but this shall not bar her right of dower in any wood lot or other land, used with the farm or dwelling house, though such wood lot or other land should have never been cleared.

SECT. 3. The judge of probate for the county, in which the estate of the husband is settled, may assign dower to the widow in the lands of which the husband died seized, in whatever counties they may be, where her right of dower is not disputed by the heirs or devisees.

SECT. 4. For the above purpose, the judge of probate may issue his warrant to three discreet and disinterested persons, empowering them to assign the dower by metes and bounds, when it can

Of what lands a woman is dowable.  
1821, 40, § 1.  
4 Mass. 566.  
10 Mass. 364.  
5 Greenl. 479.  
22 Pick. 283.  
Of what she is not dowable.  
15 Mass. 164.  
1 Pick. 21.  
7 Pick. 143.

When judge of probate may assign dower.  
9 Mass. 9.

Mode of proceeding.  
12 Mass. 454.

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be so done without prejudice to the whole estate: the commissioners to be first duly sworn before the judge of probate or a justice of the peace, to assign the same equally and impartially, and without favor and affection, as conveniently as may be, in one or more parcels, as shall be most for the interest of the parties.

Special assignment, in certain cases.  
1821, 40, § 3.

**SECT. 5.** Where no division can be conveniently made by metes and bounds, dower shall be assigned in a special manner, as of a third part of the rents and profits, to be computed and ascertained in manner as aforesaid.

Rights of widow, before assignment.  
1821, 40, § 5.  
3 Pick. 475.

**SECT. 6.** Such widow, where her husband died seized, shall be entitled to receive one undivided net third part of the rents and profits, of such estate, until the heir or heirs shall assign her dower, or the same shall be assigned by the judge of probate, or judgment of court.

Widow of naturalized alien.  
1821, 110, § 4.

**SECT. 7.** The widow of a citizen of the United States, who was an alien at the time of her intermarriage with such citizen, shall be entitled to dower in her husband's estate as other widows; except, as to land conveyed by him, or taken from him by execution, before the twenty third day of February, eighteen hundred and thirteen.

Proceedings to recover dower by suit.  
1821, 40, § 1, 2.  
12 Mass. 485.  
1 Pick. 189.  
22 Pick. 283.

**SECT. 8.** When the heir or other tenant of the freehold shall not, within one month after demand, assign to the widow of the deceased her dower in his estate, she may sue for and recover the same at common law, by writ of dower; and she may also recover her reasonable damages, in the manner prescribed in the one hundred forty fourth chapter.

How dower may be barred.  
7 Mass. 14.  
13 Mass. 223.  
3 Greenl. 63.  
13 Pick. 332.  
8 Pick. 532.

**SECT. 9.** A married woman may bar her right of dower, in any estate conveyed by her husband, by joining with him as a party in the deed of conveyance, and thereby releasing her claim of dower, or by a subsequent deed, executed jointly with her husband, or legally authorized guardian of her husband.

Same subject.  
1823, 380, § 4.  
7 Mass. 153.

**SECT. 10.** A woman may also be barred of her dower, in her husband's lands, by a jointure settled on her with her consent, before marriage; such jointure consisting of a freehold estate in lands, for the life of the wife at least, to take effect immediately on the husband's death; her assent to such jointure being expressed, if she be of full age, by becoming a party to the conveyance, by which it is settled, and if under age, by her joining with her father or guardian.

Same subject.  
1821, 40, § 6.

**SECT. 11.** Any pecuniary provision made for the benefit of an intended wife, and in lieu of dower, shall, if assented to in the manner provided in the last section, bar her right of dower in her husband's lands.

Widow may waive jointure, in certain cases.

**SECT. 12.** If any such jointure or pecuniary provision be made before marriage, and without the assent of the intended wife, or if made after marriage, it shall bar her dower, unless she shall, within six months after the husband's death, make her election to waive such provision, and file the same in writing in the probate court.

She may waive provision in her husband's will.  
1821, 38, § 15.  
1 Greenl. 148.  
12 Pick. 146.  
1 Metc. 57.

**SECT. 13.** Where any such provision shall be made in the will of a husband, for the widow, she shall, within six months after probate of the will, make her election, whether to accept it, or claim her dower; but shall not be entitled to both, unless it appears by the will, that the testator plainly so intended.

**SECT. 14.** If a woman be lawfully evicted of lands, assigned to her as dower, or settled upon her as a jointure, or be deprived of the provision made for her by will, or otherwise, in lieu of dower, she may be endowed anew in like manner, as though no such assignment or provision had been made.

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Remedy, if she be evicted of her dower.  
13 Mass. 168.  
1 Metc. 66.

**SECT. 15.** If, upon any mortgage made by a husband, the wife shall have released her right of dower, or if the husband shall be seized of land, subject to a mortgage, made by another person, or made by himself before their intermarriage, his wife shall, nevertheless, be entitled to dower in the mortgaged premises as against every person except the mortgagee, and those claiming under him; provided, that if the heir or other person, claiming under the husband, shall redeem the mortgage, the widow shall repay such part of the money paid by him, as shall be equal to the proportion, which her interest in the mortgaged premises bears to the whole value thereof; or else she shall be entitled to dower only, according to the value of the estate, after deducting the money so paid for the redemption thereof.

How she may redeem land mortgaged by her husband, having signed the deed.  
7 Greenl. 102.  
5 Pick. 146.

**SECT. 16.** If any woman, endowed of lands, shall commit or suffer any waste thereon, she shall forfeit the place wasted, and also the amount of the damages done to the premises, to be recovered, in an action of waste, by the person having the next immediate estate of inheritance therein: but, taking fuel necessary for her own use, and materials for the repair of buildings and for fences thereon, from any wood lands, of which she may be endowed, shall not be considered waste.

Penalty, if she commit waste.  
13 Maine. 273.  
5 Pick. 191.  
7 Pick. 152.  
8 Pick. 309.

**SECT. 17.** A widow may remain in the house of her husband, ninety days next after his death, without being chargeable with rent therefor; and, in the mean time, she shall have her reasonable sustenance out of the estate.

Right of widow to remain in her husband's house.

**SECT. 18.** When a man and his wife shall be seized of lands in fee, in her right, which are under improvement, and issue shall be born alive, of the body of such wife, that may inherit the same, the husband shall have and hold such estate, after the decease of the wife, during his natural life, as tenant by the curtesy.

Tenancy by curtesy.  
1821, 36, § 18.  
15 Mass. 291.  
2 Greenl. 400.  
20 Pick. 121.

**SECT. 19.** All tenancies at will may be determined by either party, by three months' notice, in writing, for that purpose given to the other party; and, when the rent, due upon such lease, is payable at periods of less than three months, the time of such notice shall be sufficient, if it be equal to the interval between the days of payment; and, in all cases of neglect or refusal to pay the rent due on a lease at will, thirty days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

Notice, to determine tenancy at will.

**SECT. 20.** The preceding section shall not be construed to extend, or be applicable, to the proceedings in cases of forcible entry and detainer, or the notice required in such cases.

Limitation of the preceding section.

**TITLE EIGHTH.****Of judicial courts and courts of county commissioners; their general jurisdiction and the officers therewith connected.**

**CHAPTER 96.** Of the supreme judicial court and its jurisdiction; and the reporter of its decisions.

- 97. Of district courts and their jurisdiction.
- 98. Of the municipal and police courts in this state.
- 99. Of county commissioners.
- 100. Of clerks of the judicial courts.
- 101. Of the attorney general and his duties.
- 102. Of county attorneys.
- 103. Of attorneys at law.
- 104. Of the powers and duties of sheriffs, deputy sheriffs, jailers, constables, and of coroners in civil actions.

**CHAPTER 96.**

**OF THE SUPREME JUDICIAL COURT AND ITS JURISDICTION; AND OF THE REPORTER OF ITS DECISIONS.**

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| <p><b>SECT. 1.</b> Organization of the court.</p> <p><b>2.</b> Powers, in civil actions.</p> <p><b>3.</b> Its criminal jurisdiction.</p> <p><b>4.</b> General supervision of other courts.</p> <p><b>5.</b> Power to issue special writs, for the furtherance of justice.</p> <p><b>6.</b> Conservators of the peace. Certain incidental powers.</p> <p><b>7.</b> Common law jurisdiction.</p> <p><b>8.</b> Certain essentials in all writs and processes.</p> <p><b>9.</b> Court may establish rules.</p> <p><b>10.</b> Its chancery jurisdiction. Forms of original process.</p> <p><b>11.</b> When writs of injunction may issue.</p> <p><b>12.</b> Of the law terms of the court.</p> <p><b>13.</b> Of terms for jury trials. Further powers, if a majority be present.</p> <p><b>14.</b> Powers of a single justice, at a law term.</p> <p><b>15.</b> Of adjournments by the sheriff, or clerk, in the absence of the court. All actions continued.</p> <p><b>16.</b> Jurisdiction concurrent with the district court in certain cases, and appellate, in the same cases.</p> <p><b>17.</b> Of exceptions by a party to the opinion of a single justice.</p> <p><b>18.</b> After exceptions, or dilatory plea over ruled, trial to proceed to verdict. Action then to be continued to the law term.</p> <p><b>19.</b> Proceedings thereon, at such term.</p> | <p><b>SECT. 20.</b> Court may allow interest on verdicts.</p> <p><b>21.</b> Provision, when the judge deems exceptions to be frivolous.</p> <p><b>22.</b> Matters cognizable by the court, held by two or more justices.</p> <p><b>23.</b> In certain cases, one justice may decide law questions.</p> <p><b>24.</b> May enter judgment in cases, continued for advisement.</p> <p><b>25.</b> Powers of a single judge, after the decision of questions of law, at the law term.</p> <p><b>26.</b> Of entry of judgment in actions continued nisi.</p> <p><b>27.</b> Mode of such entry. Attachments preserved.</p> <p><b>28.</b> Courts to be held, with a view to the completion of business in the several counties.</p> <p><b>29.</b> Supreme judicial court, the supreme court of probate.</p> <p><b>30.</b> To examine the records of registers of probate.</p> <p><b>31.</b> Mode of describing the time of holding courts.</p> <p><b>32.</b> Office of reporter.</p> <p><b>33.</b> His appointment, and tenure of office.</p> <p><b>34.</b> His duties.</p> <p><b>35.</b> Times and places of holding the law terms of the supreme judicial court.</p> <p><b>36.</b> Times and places of holding nisi prius terms.</p> |
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**SECTION 1.** The supreme judicial court shall consist of a chief justice and two associate justices ; each of whom shall be an inhabitant of this state, of sobriety of manners, and learned in the law, appointed and commissioned as prescribed in the constitution.

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Organization of the court.  
1820, 54, § 1.

**SECT. 2.** They, or a majority of them, shall have cognizance of pleas real, personal and mixed, and of all civil actions between party and party, and between the state and any of the citizens thereof, or other persons resident within it, which may be legally brought before them, by original writ, writ of error, or otherwise ; and may render judgment and award execution thereon, as is or may be provided by law.

Powers, in civil actions.  
1820, 54, § 1.

**SECT. 3.** They shall have cognizance of all capital crimes and all other offences and misdemeanors, which shall be legally prosecuted before them.

Its criminal jurisdiction.  
1820, 54, § 1.

**SECT. 4.** They shall have the general superintendence of all courts of inferior jurisdiction for the prevention and correction of errors and abuses, where the laws have not expressly provided any remedy.

General supervision of other courts.  
1820, 54, § 2.

**SECT. 5.** They shall have power to issue writs of error, certiorari, mandamus, prohibition, quo warranto, and all other processes and writs, to courts of inferior jurisdiction, to corporations and individuals, which may be necessary for the furtherance of justice, and the due execution of the laws.

Power to issue special writs, for the furtherance of justice.  
1820, 54, § 2.

**SECT. 6.** The said justices shall be conservators of the peace throughout the state, and may punish, by fine and imprisonment, or either, at their reasonable discretion, all contempts committed against their authority ; and may administer all necessary oaths in civil and criminal cases.

Conservators of the peace. Of certain incidental powers.  
1820, 54, § 1, 2.

**SECT. 7.** The said court may exercise jurisdiction, power and authority, agreeably to the common law of this state, not inconsistently with the constitution or any statute.

Common law jurisdiction.  
1820, 54, § 1.

**SECT. 8.** All writs and processes of the court shall be in the name of the state of Maine ; bear teste of the first justice, who is not a party to, or interested in the suit ; and shall be under the seal of the court, and signed by the clerk.

Certain essentials in all writs and processes.  
1820, 54, § 3.

**SECT. 9.** The court shall, from time to time, establish and record all such rules and regulations as may be necessary, respecting the modes of trial and the conduct of business, not being repugnant to law, whether in relation to suits at law or in equity.

Court may establish rules.  
1820, 54, § 4.  
1821, 50, § 1.  
3 Pick. 512.

**SECT. 10.** The said court shall also have power to hear and determine, as a court of equity, all cases of the kinds hereinafter mentioned, when the parties have not a plain and adequate remedy at law : that is,

Its chancery jurisdiction.  
1821, 39, § 2.  
1821, 50, § 1, 2.  
1830, 462, § 1.  
1857, 301.

*First.* All suits for the redemption or foreclosure of mortgaged estates ;

17 Mass. 303.  
7 Greenl. 225.  
8 Greenl. 320.  
4 Pick. 1, 75,  
78, 139, 234,  
507.

*Second.* All cases of forfeitures of recognizances in criminal cases, and of forfeitures in all civil obligations or contracts ;

5 Pick. 376.

*Third.* All cases of forfeiture of penalties to the state ;

10 Pick. 123.

*Fourth.* All suits to compel the specific performance of contracts in writing, made since February tenth, one thousand eight hundred and eighteen ;

11 Pick. 439.  
13 Pick. 8.  
22 Pick. 55, 231,  
505, 526.

*Fifth.* All cases of fraud, trust, accident or mistake ;



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*Sixth.* All cases of nuisance and waste ;

*Seventh.* All cases of partnership ;

*Eighth.* All suits or bills for discovery relating to any of the above mentioned cases, when a discovery may lawfully be required, according to the course of chancery proceedings ; and in all other cases, where equity powers are specially given to said court.

Forms of original process.

The bill or complaint in equity may be inserted in a writ of attachment or original summons, returnable to said court, and served on the adverse party like other writs or summonses in civil actions ; or the plaintiff may file his complaint with the court, and notice may be issued and served therein, as is, or may be provided by the rules of said court.

When writs of injunction may issue.  
1830, 462, § 2.

SECT. 11. The court may issue writs of injunction in all cases of equity jurisdiction, when necessary to prevent injustice ; and any justice of said court may issue such writs, in such cases, to continue in force until the end of the then next term of said court, unless sooner dissolved ; but no such writ shall issue, without notice to the adverse party to appear and answer, unless the applicant shall file a bond with sufficient sureties, to respond all damages and costs.

Of the law terms of the court.  
1823, 219, § 1.

SECT. 12. The supreme judicial court shall be annually holden by a majority of the justices thereof, in the several places, and on the several days, as mentioned in the thirty fifth section of this chapter.

Of terms for jury trials. Further powers, if a majority be present.  
1823, 219, § 2.

SECT. 13. The said court shall be annually holden by any one justice thereof, in the several places, and at the several times, mentioned in the thirty sixth section of this chapter ; and if a majority of the justices should be in attendance at such court, they may exercise all the powers, which they might exercise, and have cognizance of all matters, of which they would have cognizance, at a court holden by virtue of the preceding section.

Powers of a single justice, at a law term.  
1823, 219, § 7.

SECT. 14. Whenever, at any court to be holden by a majority of the justices thereof, that number shall not be present, any one justice, attending, may proceed to the transaction of such business, as one justice of said court is, by this act, authorized to do.

Of adjournments by the sheriff, or clerk, in the absence of the court. All actions continued.  
1820, 54, § 7.  
1823, 219, § 8.

SECT. 15. Whenever from sickness, accident, or any unforeseen cause, no justice of said court shall attend on the day for holding the court, pursuant to the twelfth or thirteenth section of this chapter, the sheriff of the county, or, in his absence, the clerk of said court shall, by oral proclamation in the court house, and by public notice, posted on the door thereof, adjourn the court from day to day, till a justice shall attend ; and, in case of necessity, may adjourn the court without day ; and, when such court shall be so adjourned, on account of the non attendance of any judge authorized to hold the same, all actions brought for such term may be entered by the clerk, and, with all continued actions on the docket, shall be continued to, and have day at the next term.

Jurisdiction concurrent with the district court in certain cases, and appellate, in the same cases.  
1835, 165, § 1.  
1839, 373, § 4, 6.

SECT. 16. The supreme judicial court shall have concurrent jurisdiction with the district court in all civil actions, in which the debt or damage demanded exceeds the sum of two hundred dollars ; and in actions of replevin, trespass on lands, real actions, actions by or against towns and plantations, and writs of dower ; and also

appellate jurisdiction in such cases, subject to the provisions of the fifteenth section of chapter ninety seven.

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**SECT. 17.** When the court is holden by any one of the justices thereof, any party thinking himself aggrieved by any opinion, direction or judgment of said justice, in any action or process, civil or criminal, may, at the same term, allege exceptions to the same; and such exceptions shall be reduced to writing in a summary manner, and signed by the party or his counsel excepting, and presented to the court before adjournment without day; and, if found true in fact, shall be allowed and signed by the justice, who tried the cause.

Of exceptions by a party, to the opinion of a single justice. 1823, 219, § 4.

**SECT. 18.** Notwithstanding such exceptions, or any dilatory plea, overruled by the presiding justice, during the trial, the proceedings before the jury shall not be stayed, but, after the trial has been closed, and a verdict returned, the action shall be continued to the next court to be holden pursuant to the twelfth section of this chapter, for decision on the exceptions allowed, subject to the provisions of the twenty first section.

After exceptions, or a dilatory plea overruled, trial to proceed to verdict. Action then to be continued to the law term. 1823, 219, § 4.

**SECT. 19.** The court, to which any action may be continued on exceptions, as aforesaid, or upon a report of the presiding judge in any trial, or upon a statement of facts agreed upon and signed in such court, or signed in the district court, and brought by appeal before the supreme judicial court for final decision, shall have cognizance thereof, and do therein what to law and justice appertain.

Proceedings thereon, at such term. 1823, 219, § 4.

**SECT. 20.** The court may allow interest on the damages given in the action, from the time the verdict was returned, to the time of rendering judgment thereon.

Court may allow interest on verdicts. 1823, 219, § 4.

**SECT. 21.** The justice, who may allow and sign exceptions as aforesaid, may, if he deem them frivolous, or intended for delay, impose such terms and conditions on the party making them, as he may judge reasonable; and, if not accepted, may enter judgment on the verdict, subject to exception, revision and correction as aforesaid by the full court.

Provision, when the judge deems exceptions to be frivolous. 1823, 219, § 4.

**SECT. 22.** Indictments in capital cases, and all motions for new trials and petitions for review; all appeals from the decrees of the judge of probate, except such as shall be tried by jury; questions of law, arising on special verdicts, and facts agreed or reserved, as stated in the nineteenth section; and all questions on demurrer, shall be heard and determined by the court, holden pursuant to the twelfth section; subject, however, to the provision contained in the thirteenth section.

Matters cognizable by the court, held by two or more justices. 1823, 219, § 5.

**SECT. 23.** In all cases, where any two of the justices of said court have been of counsel for either party, or are otherwise interested in such actions, one justice, who is not disqualified as aforesaid, shall have the like power to hear and decide all questions and matters of law, mentioned in the preceding section; and all actions, processes and matters, other than those mentioned in this and the preceding sections, may be heard and determined by any one justice of said court, holding the same pursuant to the thirteenth section of this chapter.

In certain cases, one justice may decide law questions. 1821, 56. 1823, 219, § 5.

**SECT. 24.** At any such court, judgments may be entered in those cases, which have been continued for advisement or other reason from a preceding term.

May enter judgment in cases, continued for advisement. 1823, 219, § 5.

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Powers of a single, judge after the decision of questions of law, at the law terms. 1823, 219, § 7.

Of entry of judgment in actions continued nisi. 1820, 54, § 8.

Mode of such entry. Attachments preserved. 1820, 54, § 8.

Courts to be held, with a view to the completion of business in the several counties. 1823, 219, § 8.

Supreme judicial court, the supreme court of probate. 1821, 51, § 6. 4 Pick. 129.

To examine the records of registers of probate. 1826, 343, § 6.

Mode of describing the time of holding courts. 1820, 54, § 5.

Office of reporter. 1820, 54, § 9.

His appointment, and tenure of office. 1820, 54, § 9.

His duties. 1820, 54, § 9.

Times and places of holding the law terms of the supreme judicial court. Cumberland.

**SECT. 25.** Any one of the justices of said court, when holden pursuant to the twelfth section of this chapter, may hear and try any causes, cognizable by one justice of said court, after the questions of law have been decided.

**SECT. 26.** When, at any term of said court, an action has been, or shall be continued nisi, for argument upon questions of law, by consent of parties, or for advisement by the court, or for acceptance of a report of referees, in the same or in any other county by consent, or for any other cause, it shall be lawful for the court to pronounce their decision, at any term and in any county, and judgment may be entered in such action in the county, where the cause is pending, by special order of court, as of the preceding term.

**SECT. 27.** In such case, the clerk of said court shall enter the judgment, according to such order, and also the day on which the same was entered; and all liens, created by attachment on mesne process, and then in force, shall continue to be in force, for and during thirty days after the then next term of said court.

**SECT. 28.** It shall be the duty of the court, from time to time, to make all necessary arrangements for holding said court, pursuant to said thirteenth section of this chapter, so as to enable them to complete all the business pending in the several counties.

**SECT. 29.** The supreme judicial court shall be the supreme court of probate, and shall have appellate jurisdiction of all matters determinable by judges of probate in their respective counties.

**SECT. 30.** The justices of the supreme court of probate shall examine, or cause to be examined, the records of the registers of probate in the several counties; and, if they are found deficient, shall give notice thereof to the treasurer of the county, in which such deficient register resides, that his official bond may be put in suit.

**SECT. 31.** In all writs, processes and judicial proceeding[s], civil and criminal, the day on which any term is to commence, may be designated, as the first, second or other Tuesday, (as the case may be) of the month in which the same shall happen.

**SECT. 32.** The reporter of decisions of the supreme judicial court shall continue in office, according to the tenor of his appointment.

**SECT. 33.** Whenever there shall be a vacancy in said office, it shall be the duty of the governor, with advice of the council, to appoint some suitable person, learned in the law, to be a reporter of the decisions of said court, who shall be duly sworn, and removable at the pleasure of the executive.

**SECT. 34.** It shall be his duty, personally, to attend at each law term of the court, to obtain true and authentic reports of such decisions, as may be hereafter made; and when he is not present at any term, he shall, by other means, obtain such decisions; and shall publish the same, when they will comprise a suitable volume.

**SECT. 35.** Pursuant to the provision contained in the twelfth section of this chapter, the court shall be holden at the several places and times as follows:

In and for the county of Cumberland, at Portland, on the Tuesday, next but one, preceding the last Tuesday of April;

In and for the county of York, at Alfred, on the last Tuesday of April : CHAP. 96.  
York.

In and for the county of Oxford, at Paris, on the third Tuesday of May ; Oxford.

In and for the county of Lincoln, at Wiscasset, on the fourth Monday in May ; Lincoln.

In and for the county of Kennebec, at Augusta, on the first Tuesday, next after the fourth Tuesday of May ; Kennebec.

In and for the county of Franklin, at Farmington, on the second Tuesday, next after the fourth Tuesday of May ; Franklin.

In and for the county of Somerset, at Norridgewock, on the third Tuesday, next after the fourth Tuesday of May ; Somerset.

In and for the county of Piscataquis, at Dover, on the fourth Tuesday, next after the fourth Tuesday of May ; Piscataquis.

In and for the county of Penobscot, at Bangor, on the fifth Tuesday, next after the fourth Tuesday of May ; Penobscot.

In and for the county of Washington, at Machias, on the sixth Tuesday, next after the fourth Tuesday of May ; Washington.

In and for the county of Hancock, at Ellsworth, on the seventh Tuesday, next after the fourth Tuesday of May ; Hancock.

In and for the county of Waldo, at Belfast, on the eighth Tuesday, next after the fourth Tuesday of May. Waldo.

SECT. 36. Pursuant to the provision, contained in the thirteenth section of this chapter, the court shall be holden at the several places and times, as follows : Times and places of holding nisi prius terms.

In and for the county of Cumberland, at Portland, on the second Tuesday of November ; Cumberland.

In and for the county of York, at Alfred, on the third Tuesday of September ; York.

In and for the county of Oxford, at Paris, on the second Tuesday of October ; Oxford.

In and for the county of Lincoln, at Wiscasset, on Wednesday next after the second Tuesday of September ; Lincoln.

In and for the county of Kennebec, at Augusta, on the first Tuesday of October ; Kennebec.

In and for the county of Somerset, at Norridgewock, on the last Tuesday of September ; Somerset.

In and for the county of Penobscot, at Bangor, on the fourth Tuesday of October ; Penobscot.

In and for the county of Waldo, at Belfast, on the second Tuesday of December. Waldo.

## CHAPTER 97.

### OF DISTRICT COURTS, AND THEIR JURISDICTION.

SECT. 1. District courts continued. Three districts. SECT. 3. Middle.  
2. Western district. 4. Eastern.

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- SECT. 5.** Of the several justices. Tenure of office. Qualifications.
6. Of their original and exclusive jurisdiction.
7. Their original and concurrent jurisdiction.
8. Original criminal, and appellate, civil and criminal jurisdiction.
9. Incidental powers.
10. When justice disqualified to preside, &c. cause transferred to the supreme judicial court.
11. Provisions for adjournment or substitution, in case of absence of the justice.
12. Forms of writs and processes.
13. Aggrieved party may appeal to the supreme judicial court in certain cases.
14. Of his recognizance.
15. Of the costs, when the plaintiff appeals.
16. Of the costs, when the defendant appeals.

- SECT. 17.** Proceedings, if the appeal be not entered.
18. Of exceptions alleged by either party, and their effect to stay proceedings.
19. Duty of the party excepting. Supreme judicial court to have cognizance.
20. Consequences of his neglect, or if the exceptions be found frivolous.
21. Appeal to the supreme judicial court in criminal cases, by person convicted.
22. Proceedings, if the appeal be not entered and prosecuted.
23. Power of district court to grant new trials.
24. At the same, or a subsequent term.
25. Restrictions on such power, and limitation of time.
26. Power of court to make rules.
27. Times and places of holding the courts.



District courts continued. Three districts. 1839, 373, § 2.

Western district.

Middle district.

Eastern district.

Of the several justices. Tenure of office. Qualifications. 1839, 373, § 2.

Of their original and exclusive jurisdiction. 1839, 373, § 1.

**SECTION 1.** The district court, heretofore established, is hereby continued, and the state is divided into three districts, which shall be denominated the western, the middle, and the eastern districts.

**SECT. 2.** The western district shall be composed of the counties of York, Cumberland, Oxford and Franklin.

**SECT. 3.** The middle district, shall be composed of the counties of Lincoln, Kennebec and Somerset.

**SECT. 4.** The eastern district, shall be composed of the counties of Waldo, Piscataquis, Penobscot, Hancock, Washington and Aroostook.

**SECT. 5.** There shall continue to be one justice of the district court, in and for the said western district; and one other justice of said court, in and for the said middle district; and two other justices of said court, in and for the said eastern district: and the justices of said court, who are now in office, shall continue to hold their said offices according to the tenor of their respective commissions, unless inconsistent with the constitution; and, when a vacancy shall occur in the office of either of said justices, it shall be the duty of the governor, with advice of the council, to appoint some person, learned in the law, to supply the said vacancy; who shall be commissioned, qualified and sworn, in the manner required by the constitution, to perform the duties appertaining to said office, in the counties composing their respective districts.

**SECT. 6.** The district court held in any district, by one justice thereof, shall have original and exclusive jurisdiction of all civil actions, where the debt or damage demanded does not exceed two hundred dollars; excepting actions, in which municipal or police courts, or justices of the peace have original jurisdiction, actions of replevin, trespass upon lands, ejectment, real actions, actions by or against towns, and actions in which a judge of any district court is a party or interested.

**SECT. 7.** Such district court shall have original, and concurrent jurisdiction with the supreme judicial court, in all civil actions, in which the debt, or damages, demanded exceeds the sum of two hundred dollars; and also of all actions above described, except those cognizable by a municipal or police court, or by justices of the peace.

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Their original and concurrent jurisdiction. 1839, 373, § 1.

**SECT. 8.** Such district court shall have jurisdiction of all such offences, crimes and misdemeanors, as are by law made, or shall be made, cognizable by said court; and appellate jurisdiction of all civil actions and of all crimes and offences, which may, by existing or future provisions of law, be carried by appeal to the said court.

Original criminal, and appellate, civil and criminal jurisdiction. 1839, 373, § 1.

**SECT. 9.** The said district court may administer all necessary oaths, render judgment, and award execution; and do and perform whatever, by the constitution and laws, it shall be their duty to do, as a court of record and common law jurisdiction; and shall have in their respective counties the same powers, in relation to the records and business of the late court of common pleas, as that court would have, if it still continued.

Incidental powers. 1839, 373, § 1.

**SECT. 10.** Whenever the justice in the western or middle district, or either of the justices in the eastern district, shall be interested, or otherwise disqualified to preside in the trial of any cause, pending in any court held by himself, the same shall be transferred to the supreme judicial court, next to be held in the county, in which the action is pending, if any term of the supreme judicial court shall be held therein, by law; and if not, then the cause shall be transferred to the court in that county in the district, having appellate jurisdiction of the same cause.

When justice is disqualified to preside, &c. cause transferred to the supreme judicial court. 1839, 373, § 2.

**SECT. 11.** When no justice for the district shall attend at the time and place, when and where, by law or adjournment, a court ought to be held, the sheriff or, in his absence, the clerk of the court, may by oral proclamation adjourn from day to day, or to such time as the justice of the district shall attend; or, if necessary, may adjourn the court without day, and shall post notice of such adjournment, in writing, on the door of the court house; or the court may be held by the judge of some other district, if thereunto requested by the judge, whose duty it was to hold such court.

Provisions for adjournment of substitution, in case of absence of the justice. 1839, 373, § 2.

**SECT. 12.** All writs and processes, issuing from such court, shall be in the form now in use, and shall be so authenticated, signed, sealed, served, returned and obeyed.

Forms of writs and processes. 1839, 373, § 3.

**SECT. 13.** Any party, aggrieved at the judgment of any district court, on any demurrer or agreed statement of facts, or in any personal action, wherein issue in fact has been joined, and a verdict given, in which the debt or damage demanded exceeds two hundred dollars, or in any action of replevin, or action of trespass on lands, writ of entry or of dower, or action against a town, may appeal therefrom to the next supreme judicial court to be held for the same county.

Aggrieved party may appeal to the supreme judicial court, in certain cases. 1839, 373, § 4. 5 Mass. 193. 1 Fairf. 68. 15 Maine, 365. 4 Pick. 158. 8 Pick. 522. 10 Pick. 440.

**SECT. 14.** The party appealing, before such appeal shall be allowed, shall recognize with sufficient surety or sureties, to the adverse party, in such sum, as the court shall order, to prosecute his appeal with effect, and pay all intervening damages and costs.

Of his recognizance. 1839, 373, § 4. 4 Greenl. 62. 6 Greenl. 239.

**SECT. 15.** When any such appeal shall be made in any action,

Of the costs,

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when the plaintiff appeals.  
1839, 373, § 4.  
1 Greenl. 15,  
406.  
4 Greenl. 66.  
21 Pick. 210.

except actions of trespass on land, replevin, actions against towns, writs of entry or writs of dower, from judgment on demurrer filed, by consent of parties, with an agreement to waive the same, or judgment on an agreed statement of facts, by any plaintiff, and he shall not recover more than two hundred dollars, debt or damage, he shall not recover any costs after such appeal; but the defendant shall recover his costs, on such appeal, against the plaintiff, to be set off against the plaintiff's claim; but if it exceed said claim, the defendant shall have execution for the residue.

Of the costs, when the defendant appeals.  
1839, 373, § 4.  
7 Greenl. 356.  
1 Fairf. 69.

**SECT. 16.** When such appeal is made by the defendant, and the debt or damages are not reduced, the plaintiff shall be entitled to recover double costs on the appeal; unless the justice, trying the cause in the district court, shall certify, that there was just and reasonable cause for such appeal.

Proceedings, if the appeal be not entered.  
1839, 373, § 4.

**SECT. 17.** If the appellant shall not enter his appeal in the supreme judicial court, they may, on complaint of the appellee, render judgment in such action, affirming the former judgment, with interest on the damages, if for the plaintiff, and in all cases with the subsequent costs.

Of exceptions alleged by either party, and their effect to stay proceedings.  
1839, 373, § 5.  
2 Greenl. 198,  
336.  
3 Greenl. 216.  
8 Greenl. 288.

**SECT. 18.** Any party aggrieved by any opinion, direction or judgment of the district court in any matter of law, in a cause not otherwise appealable, may allege exceptions to the same; and when reduced to writing in a summary way, and being found correct, the exceptions shall be allowed and signed by the presiding judge of the court, before the adjournment thereof without day; and all further proceedings in said court shall be stayed, excepting, that any trial before a jury shall proceed until a verdict is rendered; and the excepting party shall recognize, as provided in section, fourteen.

Duty of the party excepting. Supreme judicial court to have cognizance.  
1839, 373, § 5.  
6 Greenl. 60.  
14 Maine, 97.  
1 Metc. 225.

**SECT. 19.** In such case, the party alleging the exceptions shall enter the action in the supreme judicial court, at the next term thereof in the same county, and produce all the papers, as in case of appeal; and the supreme judicial court shall have cognizance of the cause, and determine the same, as they may actions, originally commenced in that court, and render judgment, or grant a new trial, as in such cases.

Consequences of his neglect, or if the exceptions be found frivolous.  
1839, 373, § 5.

**SECT. 20.** When the party alleging exceptions shall fail to enter the action at the supreme judicial court at the next term, and the adverse party shall enter his complaint; or when the court shall determine the exceptions frivolous, or alleged for delay, the court shall award double costs against the excepting party, and increase the damages, if any, by adding legal interest thereon.

Appeal to the supreme judicial court in criminal cases, by person convicted.  
1839, 373, § 5.  
4 Greenl. 541.

**SECT. 21.** Any person, convicted of an offence in the district court, may allege exceptions to any opinion, direction or judgment of said court, which shall be allowed and signed by the presiding judge, in the manner mentioned in section, eighteen; and the person alleging the exceptions shall recognize with sureties, and the court shall direct, to produce the papers, and prosecute his exceptions before the supreme judicial court, and abide the sentence and order of said court, or, if the cause should be remanded, of the district court, and not depart without license; and the supreme judicial court shall have cognizance thereof, and may affirm the

verdict, rendered in the district court, or grant a new trial and enter judgment, or remand the cause to the district court, as justice may require.

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SECT. 22. If he shall fail to enter and prosecute his appeal, the court may sentence him to such punishment, as the district court might have inflicted; and for that purpose may issue process to compel his attendance, if absent, or adjudge the recognizance forfeited, or both, as the case may require.

Proceedings, if the appeal be not entered and prosecuted. 1839, 373, § 5.

SECT. 23. The district court, before rendering judgment, shall have power to grant a new trial of any action, and for any cause for which, by the common law, a new trial may be granted, or when, in the opinion of the court, justice has not been done between the parties, on such conditions, as the court may think proper to impose.

Power of district court to grant new trials. 1839, 373, § 7. 11 Pick. 189.

SECT. 24. Such new trial may be granted at the same term, at which the judgment was rendered, or at a subsequent term.

At the same, or a subsequent term. 1839, 373, § 7.

SECT. 25. But no such new trial shall be granted, except when the judgment of the district court is final; nor, unless due notice has been given to the adverse party; nor where there have been two verdicts in the cause against the applicant; nor unless a motion therefor shall have been filed, within one year after such verdict.

Restrictions on such power, and limitation of time. 1839, 373, § 7. 4 Greenl. 58.

SECT. 26. The court shall have power, from time to time, to establish rules, as to entry of actions, filing pleas in abatement, and demurrers to declarations, and the conduct of business, as they may think proper, not repugnant to the laws of the state.

Power of court to make rules. 1839, 373, § 7. 3 Pick. 512.

SECT. 27. The district court shall be held annually, in the several counties in the state, at the places and times hereinafter mentioned; that is to say:

Times and places of holding the courts.

At Alfred, for the county of York, on the second Monday of February, the last Monday of May, and the third Monday of October;

York.

At Portland, for the county of Cumberland, on the first Tuesday of March, the third Tuesday of June, and the first Tuesday of October;

Cumberland.

At Warren, for the county of Lincoln, on the fourth Tuesday of April; at Topsham, on the fourth Tuesday of August; and at Wiscasset, on the fourth Tuesday of December;

Lincoln.

At Augusta, for the county of Kennebec, on the first Tuesdays of April, August and December;

Kennebec.

At Norridgewock, for the county of Somerset, on the second Tuesday of March, the last Tuesday of June, and the first Tuesday of November;

Somerset.

At Ellsworth, for the county of Hancock, on the fourth Tuesday of April, and the third Tuesday of October;

Hancock.

At Machias, for the county of Washington, on the last Tuesday in February, and third Tuesday in September;

Washington.

At Paris, for the county of Oxford, on the second Tuesdays of June and November;

Oxford.

At Bangor, for the county of Penobscot, on the first Tuesday of January, the first Tuesday in October, and the fourth Tuesday in May;

Penobscot.

At Belfast, for the county of Waldo, on the fourth Tuesdays of March and September.

Waldo.



**CHAP. 97.** At Farmington, for the county of Franklin, on the last Mondays of March and September ;  
 Franklin. At Dover, for the county of Piscataquis, on the fourth Tuesday of March, and second Tuesday in September ;  
 Piscataquis. At Houlton, for the county of Aroostook, on the third Tuesday of January, and the second Tuesday of June.  
 Aroostook.

**CHAPTER 98.**

OF THE MUNICIPAL AND POLICE COURTS IN THE STATE.

**ARTICLE I. MUNICIPAL COURT IN PORTLAND.**

- SECT. 1.** Court continued with its present judge.
2. New appointment in case of vacancy. One judge.
  3. His jurisdiction, as a justice of the peace, concurrent or exclusive.
  4. Not to act as counselor or attorney, in any court.
  5. His jurisdiction in cases of larceny, and offences against city by laws.
  6. Houses of ill fame.
  7. Right of appeal.
  8. Fines to be accounted for.
  9. Jurisdiction, though penalty accrue to the city.
  10. Time of holding courts.
  11. Of the recorder. His appointment, duties and fees.
  12. Recorder's powers in the absence of the judge.
  13. Justice of the peace substituted, in absence of the judge and recorder.
  14. Provision, when office of judge is vacant.
  15. Restrictions on justices of the peace, in Portland.
  16. Exception, under the laws of the United States.
  17. When recorder may issue warrants.

**ARTICLE II. MUNICIPAL COURT IN BATH.**

- SECT. 18.** Court continued with its present judge.
19. New appointment, in case of vacancy.
  20. Time and place of holding court. Its expenses.
  21. Extent of its jurisdiction.
  22. Right of appeal.
  23. Of the recorder.
  24. To act as judge, in case of death of judge.
  25. Judge not to be counselor, nor attorney, &c.
  26. Fines to be accounted for.
  27. Restrictions on justices of the peace, in Bath.

**ARTICLE III. POLICE COURT IN BANGOR.**

28. Court continued with its present judge.
- 29, 30, 31, 32. Jurisdiction.
33. Right of appeal.
34. Records to be kept by the judge.
35. Time and place of holding court. Fees. Disposal of fines.
36. Provision, in case the judge dies or is unable to attend.
37. Expenses of the court, defrayed by the city.
38. Judge, not to be counsel, nor attorney, &c.
39. Repeal of inconsistent parts of city charter.

**ARTICLE I. MUNICIPAL COURT IN PORTLAND.**

Court continued with its present judge. 1825, 294, § 1.

**SECTION 1.** The municipal court, established in the city Portland and county of Cumberland, clothed with its present jurisdiction and powers, shall continue, until altered by law; and judge thereof continue to hold his office, according to the tenor of his commission.

New appointment in case of vacancy. One judge. 1825, 294, § 1.

**SECT. 2.** Whenever a vacancy in the office shall occur, it shall be the duty of the governor, by advice of the council, to appoint a judge thereof, who shall be duly sworn; and said court shall always consist of one judge.

**SECT. 3.** He shall, except where interested, exercise jurisdiction over all such matters and things, within said county, as justices of the peace may exercise, and under similar restrictions and limitations; also concurrent jurisdiction with justices of the peace and quorum in cases of forcible entry and detainer in said county; and exclusive jurisdiction, where both parties interested, or the plaintiff, and a person sued as a trustee, are inhabitants of said Portland.

**SECT. 4.** He shall not, in any case, act as counselor or attorney in any court.

**SECT. 5.** The said court may take cognizance of simple larcenies, when the property alleged to be stolen shall not exceed in value twenty dollars, and on conviction award such sentence, as is by law provided for such offences; and have exclusive jurisdiction of all offences against the by laws of said city; and in prosecutions on such by laws, they need not be recited in the complaint, nor the allegations therein be more particular, than in prosecutions on a public statute.

**SECT. 6.** The same proceedings may be had in the same manner, against persons keeping houses of ill fame, for the purposes of lewdness or prostitution, on complaint, as before a justice of the peace.

**SECT. 7.** Any person may appeal, from a sentence or judgment against him, to the then next district court holden in said county, in the same manner, as from a sentence or judgment of a justice of the peace.

**SECT. 8.** All fines and penalties, awarded by said judge, shall be accounted for and paid over, as in case of those awarded by a justice of the peace.

**SECT. 9.** The court shall have jurisdiction, though the penalty, demanded in any action or prosecution, accrues to the city of Portland.

**SECT. 10.** The municipal court shall be held on Monday and Thursday of each week, at nine of the clock in the forenoon, and no civil process shall be returnable at any other time.

**SECT. 11.** There shall be a recorder of the court, who shall always be a justice of the peace, and duly qualified as such, and he shall be appointed by the judge of the court; and he shall be duly sworn, as recorder, and shall keep a fair record of the proceedings of the court, and deliver copies when required, for the same fees, which are allowed to justices of the peace.

**SECT. 12.** When the judge is absent, it shall be the duty of the recorder, and he shall have authority, to exercise all the powers of the judge, excepting the trial of issues in civil actions.

**SECT. 28.** If the judge and recorder are both necessarily absent, the judge may designate some justice of the peace, duly qualified, to perform the duties of his office; or, if the judge should not so designate a justice of the peace, the recorder may do it.

**SECT. 14.** When the office of judge shall be vacant, the recorder shall finish the business pending before the court; and, during the continuance of such vacancy, the justices of the peace, residing in the city of Portland, may perform all acts and duties appertaining to the office of justice of the peace.

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His jurisdiction, as a justice of the peace, concurrent or exclusive.  
1826, 324, § 1.

Not to act as counselor or attorney.  
1825, 294, § 4.  
His jurisdiction in cases of larceny, and offences against city by laws.  
1825, 294, § 3.  
1826, 324, § 2.

Houses of ill fame.  
1826, 324, § 2.

Right of appeal.  
1825, 294, § 3.

Fines to be accounted for.  
1825, 294, § 5.

Jurisdiction, though the penalty accrue to the city.  
1826, 324, § 2.  
Time of holding courts.  
1828, 381, § 1.

Recorder, his appointment, duties and fees.  
1828, 381, § 2, 3.  
1837, 266, § 1.

Recorder's powers, in absence of the judge.  
1828, 381, § 2.

Justice of the peace, substituted in absence of the judge and recorder.  
1837, 266, § 1.

Provision, when office of judge is vacant.  
1837, 266, § 2.

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Restrictions on justices of the peace, in Portland. 1825, 294, § 2.

Exception, under the laws of the United States. 1825, 324, § 3.

When recorder may issue warrants. 1829, 523.

SECT. 15. No justice of the peace, residing in the city of land, except during the vacancy in the office of the judge of court, as mentioned in the preceding section, shall in any ma take cognizance of, or exercise jurisdiction over any crime or off or in any civil action, wherein the judge is not a party or ested; nor accept or receive any fee or reward therefor; and such justice of the peace, by violating this section, shall f twenty dollars, to be recovered on indictment.

SECT. 16. But nothing in the preceding section shall be strued, as prohibiting the justices of the peace, residing in Port from exercising, at all times, all the power and jurisdiction them by any laws of the United States.

SECT. 17. When the judge is occasionally absent from the or office, in which the court is held, the recorder shall have p on proper complaint, to issue warrants for the apprehension of sons, charged with any criminal offence or breach of the p and such warrants shall have the same authority, as if issued b judge.

ARTICLE II. MUNICIPAL COURT IN BATH.

Court continu- ed with its pres- ent judge.

SECT. 18. The municipal court in the town of Bath, in county of Lincoln, shall continue in possession of its present po and jurisdiction, until the same shall be altered; and the thereof shall continue to hold his office, according to the tenor commission.

New appoint- ment, in case of vacancy. 1834, 134, § 7.

SECT. 19. When a vacancy shall happen in the office of j the governor, with advice of the council, shall appoint a sui person, to be judge of said court, who shall be duly sworn.

Time and place of holding court. Its ex- penses. 1834, 134, § 3.

SECT. 20. The court shall be held at such time and plac Bath, as the judge thereof shall direct; and said town may money to furnish a room, and pay such expenses of the cou may be necessary.

Extent of its ju- risdiction. 1834, 134, § 1, 4.

SECT. 21. The court shall continue to have, and may exe the same jurisdiction in Bath, and in the county of Lincoln, a municipal court in the city of Portland may lawfully exerci that city, and, in the county of Cumberland; and, in addition th the judge of the court may sentence any person, convicted b him, to the house of correction or jail of the county of Lincol such terms, as may be agreed upon between the town of l and the overseers of the house of correction and said county.

Right of appeal. 1834, 134, § 5.

SECT. 22. Any person, aggrieved by any sentence or judg of said court, may appeal to the next district court in the cour

Recorder. 1834, 134, § 6. 1837, 266.

SECT. 23. The judge may appoint and employ a recorder, shall be a justice of the peace for said county, duly qualified, s own expense, and during his pleasure; who shall be duly sv and, in case of absence or sickness of the judge, shall have al powers of the judge, except the trial of issues in civil actions.

To act as judge, in case of judge's death. 1834, 134, § 6. 1837, 266.

SECT. 24. In case of the death of the judge, such recorder s have all the powers, be liable to all the duties, and entitled to salary of the judge, until a judge shall be commissioned and sw

Judge not to be counselor or attorney, &c. 1834, 134, § 7.

SECT. 25. The judge shall not act as counselor or attorne any case, which may come before the court.

SECT. 26. All fines and penalties, awarded by the judge, shall be accounted for, in manner before provided, in case of those awarded by a justice of the peace.

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Fines to be accounted for. 1834, 134, § 7. Restrictions on justices of the peace, in Bath. 1834, 134, § 2.

SECT. 27. No justice of the peace, in Bath, shall exercise any civil or criminal jurisdiction, except under the authority of the United States, in any civil or criminal process, wherein the judge is not a party or interested, under the penalty of twenty dollars, to be recovered on indictment.

ARTICLE III. POLICE COURT IN BANGOR.

SECT. 28. The police court for the city of Bangor, in the county of Penobscot, shall continue to possess its present powers, until changed by law ; and the judge thereof shall continue to hold his office, according to the tenure thereof.

Court continued with its present judge. Special laws, 1839, 566.

SECT. 29. The judge of the court shall have concurrent jurisdiction with justices of the peace, in all matters, civil and criminal, under twenty dollars, within the county of Penobscot.

Jurisdiction.

SECT. 30. He shall have original and exclusive jurisdiction in all civil actions, if otherwise cognizable by a justice of the peace, in which both parties interested, or, in which the plaintiff and the person or persons summoned as trustee or trustees, shall be inhabitants of, or residents in said city, excepting all actions, in which such judge may be interested.

Same subject.

SECT. 31. Such court shall also have concurrent jurisdiction with justices of the peace and quorum, in all cases of forcible entry and detainer, arising in said county ; and exclusive jurisdiction, in all such cases arising in said city.

Same subject.

SECT. 32. He shall have original and exclusive jurisdiction of all offences against the by laws of the city.

Same subject.

SECT. 33. Any person, aggrieved by any judgment or sentence awarded by said court, may appeal therefrom to the district court, in like manner, as from a judgment or sentence awarded by a justice of the peace, or by a justice of the peace and quorum.

Right of appeal.

SECT. 34. It shall be the duty of the judge of said court to make and keep his records, and perform all the duties, which are usually exercised by justices of the peace. The price of blank writs, signed by the judge, shall be no more than four cents each ; and copies of the records of such court, duly certified by the judge, shall be legal evidence in all courts.

Records to be kept by the judge.

SECT. 35. The court shall be held weekly, on Monday, at nine of the clock in the forenoon, at such place as shall be provided by the city ; and all civil processes shall be made returnable accordingly ; and the judge may adjourn the court from day to day, if necessary. The fees in all cases shall be the same, as are taxable by justices of the peace, and all fines shall be accounted for and paid over by said judge, when collected, as if awarded by a justice of the peace.

Time and place of holding court. Fees. Disposal of fines.

SECT. 36. In case of the death, sickness, or inability of the judge to attend at the place appointed on any court day, to transact business, such court shall stand adjourned to the succeeding Monday ; and so, from week to week, until the judge is able to attend ; and, in the cases before mentioned, the criminal jurisdiction shall

Provision, in case the judge dies, or is unable to attend.

**CHAP. 98.** devolve on the justices of the peace for the county, during the continuance of such disability, and until such proceedings, as are instituted during its continuance, shall have the final adjudication of such justices.

Expenses of the court, defrayed by the city.

**SECT. 37.** The city of Bangor shall raise and assess moneys for defraying the expenses of such court, and providing a suitable place for holding the same.

Judge, not to be counselor, nor attorney, &c.

**SECT. 38.** The judge shall not act as counsel or attorney in any case, within the jurisdiction of the court, nor in any cause or matter or thing, which may depend on, or relate to any cause cognizable by said court.

Repeal of inconsistent parts of the city charter.

**SECT. 39.** All parts of the act, entitled "an act to incorporate the city of Bangor," inconsistent with the provisions of this chapter are hereby repealed.

## CHAPTER 99.

### OF COUNTY COMMISSIONERS.

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| <p><b>SECT. 1, 2.</b> Constitution of the board, and tenure of office.</p> <p><b>3.</b> Their general powers and duties.</p> <p><b>4.</b> To provide fire proof buildings, for records and offices.</p> <p><b>5.</b> Jails to be erected and kept in repair.</p> <p><b>6.</b> Prisoners for debt, to be kept separate from criminals.</p> <p><b>7.</b> State of the prisons, to be examined.</p> <p><b>8.</b> Times and places of stated meetings.</p> <p><b>9.</b> Clerk of the board.</p> <p><b>10.</b> Mode of keeping records, by a clerk pro tem.</p> <p><b>11.</b> Of a quorum, and adjournments without a quorum.</p> | <p><b>SECT. 12.</b> Petitioners to pay expenses, if prayer be not granted.</p> <p><b>13.</b> Compensation of the commissioners.</p> <p><b>14.</b> Of the settlement of their accounts for services.</p> <p><b>15.</b> The same to be published, and sent to the secretary of state.</p> <p><b>16.</b> Commissioners not to be agents, in certain cases.</p> <p><b>17, 18.</b> Of changing the location of county buildings.</p> <p><b>19.</b> Officers to obey the precepts of the board.</p> <p><b>20.</b> Of warrants of distress.</p> <p><b>21.</b> Action of debt, on their judgments.</p> <p><b>22.</b> Remedy for inhabitants of towns, making payments for their towns.</p> |
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Constitution of the board, and tenure of office. 1831, 500, § 1.

**SECTION 1.** The county commissioners, in the respective counties, shall continue in office, until the expiration of four years from the time of their appointment, unless before removed by the governor and council. The board shall consist of a chairman and two other members in each county, and citizens of, and residents in their respective counties.

Same subject. 1831, 500, § 1.

**SECT. 2.** Whenever vacancies shall occur in the office aforesaid, the governor, with advice of the council, shall appoint suitable persons to fill the same, citizens and residents as aforesaid, in the county for which they shall be appointed, who shall also hold their offices for the said term of four years, unless sooner removed by the governor and council. The chairman in each county shall be designated, as such, by his commission.

**SECT. 3.** The county commissioners, for their respective counties, shall have power to provide for the erecting and repairing of court houses, jails and other necessary public buildings, within and for the use of the county ; to make estimates to be laid before the legislature, of the sums, which may, from time to time, be necessary to be assessed for defraying county charges, and to take the necessary and legal measures for apportioning and assessing the same ; to examine, allow and settle all accounts of the receipts and expenditures of the moneys of the county ; to represent their respective counties, and to have the care of the county property, and the management of the business and the concerns of the county ; and, by their order of record, appoint an agent to sell and dispose of any real estate of said county, for and on behalf of the inhabitants of said county ; to lay out, alter or discontinue highways or other ways, to award damages occasioned thereby, and do any thing else, which, by the laws of this state now in force, is authorized to be done by the county commissioners, or by a court of sessions.

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Their general powers and duties.  
1821, 46, § 3.  
1821, 73, § 1.  
1831, 500, § 3.

**SECT. 4.** The commissioners, in each county, shall provide suitable fire proof buildings of brick or stone, for the safe keeping of records, files, papers and documents, pertaining to the offices of the register of deeds, register of probate, and clerk of the judicial courts ; with separate fire proof rooms for said offices, with suitable alcoves, cases or boxes.

To provide fire proof buildings, for records and offices.  
1821, 109, § 1.

**SECT. 5.** The commissioners shall assess such sums, as the legislature may, from time to time, require, on the polls and estates in their respective counties, to erect and keep in repair a good and sufficient jail in each town, where the supreme judicial court is by law required to be holden, if no other provision is made by law ; and they shall, at their discretion, order and direct respecting the building and repairing the same.

Jails to be erected, and kept in repair.  
1821, 110, § 1.

**SECT. 6.** The said commissioners shall also provide, at the expense of their respective counties, sufficient and convenient apartments in said jails, for receiving and lodging prisoners for debt, separate from criminals.

Prisoners for debt, to be kept separate from criminals.  
1821, 110, § 1.

**SECT. 7.** The commissioners shall also, at the beginning of each of their stated sessions, inquire into the state of the respective prisons in their counties, and take necessary precautions, as to their security from escape, infection or other sickness, and as to the condition and accommodation of all the prisoners.

State of the prisons to be examined.  
1821, 110, § 1.

**SECT. 8.** The county commissioners shall stately meet, in and for their respective counties, for the discharge of the duties of their office, at the time and places following, to wit:

Times and places for stated meetings.

In the county of York, at Alfred, on the Tuesday next preceding the last Monday of May, and on the second Tuesday of October ;

York.

In the county of Cumberland, at Portland, on the first Tuesday of June, and third Tuesday of December ;

Cumberland.

In the county of Lincoln, at Wiscasset, on the second Tuesday of January ; at Warren, on the second Tuesday of May ; and at Topsham, on the first Monday of September ;

Lincoln.

In the county of Kennebec, at Augusta, on the last Tuesdays of April and December ;

Kennebec.

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**Somerset.** In the county of Somerset, at Norridgewock, on the third Tuesday of March, and the first Tuesday of October ;

**Hancock.** In the county of Hancock, at Ellsworth, on the last Tuesday of April, and on the Thursday following the third Tuesday of October ;

**Washington.** In the county of Washington, at Machias, on the first Wednesday next after the first Tuesday of March, and on the first Wednesday, next after the third Tuesday of September ;

**Oxford.** In the county of Oxford, at Paris, on the third Tuesday of June, and the last Tuesday of October ;

**Penobscot.** In the county of Penobscot, at Bangor, on the first Tuesdays of April and August, and on the second Tuesday of December ;

**Waldo.** In the county of Waldo, at Belfast, on the third Tuesdays of April and August ;

**Franklin.** In the county of Franklin, at Farmington, on the last Tuesdays of April and December ;

**Piscataquis.** In the county of Piscataquis, at Dover, on the first Tuesdays of April and December ;

**Aroostook.** In the county of Aroostook, at Houlton, on the third Tuesday of January, and the first Tuesday of July.

**Clerk of the board.** 1825, 306, § 3, 4. **SECT. 9.** The clerk of the judicial courts, in each county, shall be the clerk of the commissioners ; but, whenever the supreme judicial court, or the district court, shall be in session at the same time with the county commissioners, the said clerk may appoint some suitable person to act as clerk pro tempore to the commissioners, who shall be sworn to the faithful discharge of his duties, and for whom he shall be accountable.

**Mode of keeping records, by clerk pro tem.** 1825, 306, § 4. **SECT. 10.** The clerk pro tempore, appointed as aforesaid, shall make a daily record of the doings of said commissioners, which record they shall examine and certify, if correct, and, when thus certified, the same shall be, by the stated clerk, copied into the records of said commissioners.

**Of a quorum, and adjournments without a quorum.** 1825, 306, § 6. 1832, 42, § 4. **SECT. 11.** At any meeting of the commissioners of any county, any two of the board shall be a quorum for the transaction of business ; but, if only one member be present, he shall have power to adjourn the meeting to any convenient time or place. If no commissioner shall attend, at any place and time of meeting duly appointed, the clerk shall have the same authority to adjourn the court, as is provided in like case, of the supreme judicial court.

**Petitioners to pay expenses, if prayer be not granted.** 1832, 42, § 5. **SECT. 12.** Whenever the county commissioners shall decide against the prayer of any petition, they shall order the petitioners to pay, into the county treasury, all expenses incurred by the county, by reason of said petition and the proceedings thereon, and fix a reasonable time for such payment ; and, if the same be not paid aforesaid, they shall issue a warrant of distress against the petitioners.

**Compensation of the commissioners.** 1833, 79, § 5. **SECT. 13.** The compensation of each county commissioner shall be two dollars and fifty cents, a day, and in that proportion for any part of a day, actually employed in the service of the county ; including time necessarily spent in making drafts or other labor, and exclusive of time spent in traveling, for which they shall be allowed ten cents a mile for the distance, actually traveled ; and the account shall specify the kind of service performed, each day or part of

day; and no additional charges shall be allowed for trouble or expenses of any kind, neither shall they be allowed for services or travel on more than one petition, or one case at the same time.

SECT. 14. Each commissioner shall keep an accurate account of his time spent, and actual travel, as aforesaid, specifying the places from, and to which, he traveled each day; and he shall not be allowed for any services, not so specified. Such account shall be audited and examined by the county attorney and clerk, who shall certify the amount allowed, one of them having first sworn such commissioner to the truth of his account; and no further sum shall be paid on such account by the county, than is thus certified.

Settlement of their accounts for services. 1833, 79, § 5.

SECT. 15. The clerk shall cause a copy of such account to be published in some newspaper, printed in the county, if any there be; and he shall also return a copy thereof to the secretary of the state, on or before the first day of January in each year.

The same to be published, and sent to the secretary of state. 1833, 79, § 5.

SECT. 16. No county commissioner shall be appointed on any agency, to lay out and expend, for any purpose, any sum or sums of money, assessed or raised by warrant of distress or otherwise, under the authority of the board, of which he is a member.

Commissioners not to be agents, in certain cases. 1836, 198, § 1.

SECT. 17. The commissioners in their respective counties shall not have power to remove any county building in the shire town of such county, nor to erect a new building as a substitute for any such building, to or at a distance, exceeding one half of a mile from the former location of such building, without giving notice of their intention, and the place where such building is proposed to be removed or erected, to the selectmen of each town, and the assessors of each organized plantation in such county, and obtaining the consent of the inhabitants of the county, in the manner provided in the next section.

Of changing the location of county buildings. 1822, 202, § 1.

SECT. 18. The selectmen and assessors aforesaid shall lay the said notice before such towns and plantations, respectively, at a meeting to be held on the day of their next annual meeting for the choice of state, town or plantation officers; and, at such meeting shall receive, sort and count the votes, that shall be given by the inhabitants qualified to vote in town or plantation affairs, in favor of, or against such proposed removal or erection. Returns of such votes, certified by the said selectmen or assessors, and the town or plantation clerks, respectively, shall be made by such clerks, within thirty days after such votes shall have been received, as aforesaid, to the office of the clerk of the county commissioners; and the said commissioners shall examine the returns aforesaid, and shall carry such removal or erection into effect, or not, according to the decision of the majority of such voters, ascertained from the returns made, as aforesaid.

Same subject. 1822, 202, § 1.

SECT. 19. All sheriffs, deputy sheriffs, coroners and constables shall serve and execute all legal warrants and processes, to them directed by said commissioners.

Officers to obey the precepts of the board.

SECT. 20. All warrants of distress, under the authority of any court of county commissioners, shall be originally issued within two years after the rendition of judgment, and made returnable to the clerk's office, in ninety days from the date thereof. If returned unsatisfied, in whole or in part, new warrants may be issued, from

Warrants of distress. 1833, 64, § 1. 1834, 133, § 5. 1836, 250.



**CHAP. 99.** time to time, for the sums remaining due; but no alias or pluries warrants of distress shall be thus issued, after the expiration of two years from the return day of the warrant, last preceding; provided, that no warrant of distress shall be originally granted on any judgment of such commissioners, against any town or plantation, until twenty days after a certificate of the rendition of such judgment shall have been transmitted by the clerk of the commissioners to the assessors of such town or plantation. The interest on damages, recovered in such judgment, shall be included and provided for in such warrants, as in case of executions under chapter, one hundred and fifteen.

Action of debt, or scire facias on their judgments. 1833, 64, § 2.

**SECT. 21.** The party, for whose benefit any judgment shall have been rendered by the commissioners of any county, shall have like remedy for the same and interest, by an action of debt upon such judgment, or scire facias, before any court of competent jurisdiction, as is provided for judgments, recovered before the judicial courts.

Remedy, for inhabitants making payments for their towns. 1833, 64, § 4. 1834, 153, § 1, 2, 3, 4.

**SECT. 22.** On all judgments rendered, or warrants of distress issued, by county commissioners against the inhabitants of any town or plantation in their respective counties, any such inhabitant, who shall voluntarily pay or be disposed to pay his due proportion of the same, or who shall have been compelled to satisfy the same, in whole or in part, shall be entitled to the like remedies and processes, as is provided in chapter, one hundred and seventeen, in relation to judgments or executions from the judicial courts.

## CHAPTER 100.

### OF CLERKS OF THE JUDICIAL COURTS.

- SECT. 1.** Present clerks to continue in office.
2. Vacancies to be filled by appointment.
  3. Tenure of office.
  4. The same clerk, for all the judicial courts in the county.
  5. Oath and bond.
  6. To account with the county treasurer, for moneys received.
  7. When to pay over balances. Consequences of neglect.
  8. Of a clerk pro tem.
  9. To be sworn and give bonds, as the court may direct.
  10. Clerk to certify, to assessors, fines due from their towns.

- SECT. 11.** To record marriages, certified to him.
12. To receive fines, &c. imposed by any judicial court for use of the state.
  13. To transmit a certificate of fines, &c. to the secretary of state.
  14. Judges to examine into the state of the records. Bond to be put in suit for default.
  15. Money recovered, to be appropriated to making up the records. Further liability of clerk, in case, &c.
  16. Penalty for exacting illegal fees.

Present clerks to continue in office.

Vacancies to be filled by appointment.

**SECTION 1.** The clerks, now in office, shall continue to hold their offices, according to the tenor of their respective commissions.

**SECT. 2.** Whenever a vacancy in the office, in any county, shall occur, the governor, with advice of the council, shall appoint some person to fill the vacancy.

**SECT. 3.** All clerks shall be appointed for the term of four years; but shall be removable at any time, within that period, at the pleasure of the governor and council.

**SECT. 4.** The person appointed clerk, as aforesaid, shall be clerk of all the judicial courts in the county, for which he is appointed, and shall perform all the duties, which, as clerk, he is by law bound to perform.

**SECT. 5.** Every clerk, before entering on the duties of his office, shall be duly sworn, and shall give bond to the state, to the acceptance of the governor and council, in the penal sum of eight thousand dollars, with two or more sureties, conditioned that he shall faithfully perform all the duties of his office, and pay over all the moneys he is required to, and for the safe keeping and immediate delivery of all records, files, papers and muniments in said office; and such bond shall be lodged in the office of the state treasurer.

**SECT. 6.** Each clerk shall keep a true and exact account of all the moneys, he shall receive or be entitled to receive for services by virtue of his office, and shall, annually on the first Wednesday of January, render to the treasurer of his county, under oath, a true account of the whole sum thus accrued; and, after deducting his own salary, pay over the residue, if any, of the gross amount, to the treasurer of his county, for the use of the county.

**SECT. 7.** All sums, which he is thus bound to pay over to the county treasurer, not provided for in the preceding section, shall be paid within thirty days after he may have received the same. In case he shall neglect or refuse to pay over any sum, for which he is accountable, under the provisions of this chapter, he shall pay interest thereon at the rate of twenty five per cent. by the year, until paid; and it shall be the duty of the county treasurer to notify the treasurer of the state of any such delinquency known to him, and the bond of the delinquent shall thereupon be put in suit.

**SECT. 8.** Whenever a vacancy may happen in the office of clerk in any county, or if the clerk be absent, and an existing or immediate session of any court, of which he is clerk, renders an appointment of a clerk necessary, such court may make an appointment of a clerk to supply the vacancy, until an appointment of one shall be made by the governor and council, or during such absence.

**SECT. 9.** Such temporary clerk shall be duly sworn, and shall be held to give bonds in such penalty, as the court shall order.

**SECT. 10.** Whenever a fine shall be imposed on any town or plantation by any court, for the repair of any highway or town way, the clerk of such court shall forthwith certify the same to the assessors of such town or plantation.

**SECT. 11.** Every clerk shall record all marriages, certified to him by the clerk of any city, town or plantation.

**SECT. 12.** Every clerk shall receive all fines, forfeitures and bills of costs, arising or imposed, to the use of the state, by any judicial court, and which shall be paid or tendered to such clerk, before the issuing of a warrant of distress or other process to enforce the order or sentence of the court; and, when he gives discharges therefor, he shall enter them on record, and pay over the same to the county treasurer, within twenty days.

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Tenure of office.  
1820, 90, § 1.

The same clerk, for all the judicial courts in the county.  
1820, 90, § 1.

Oath and bond.  
1820, 90, § 3.

To account with the county treasurer, for moneys received.  
1820, 90, § 2.

When to pay over balances. Consequences of neglect.  
1820, 90, § 4.

Of a clerk pro tem.  
1820, 90, § 5.

To be sworn and give bonds, as the court may direct.

Clerk to certify, to assessors, fines due from their towns.  
1825, 300, § 4.

To record marriages, certified to him.

To receive fines, &c. imposed by any judicial court, for use of the state.  
1830, 464, § 1.

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To transmit a certificate of fines, &c. to the secretary of state. 1830, 464, § 3.

Judges to examine into the state of the records. Bond to be put in suit for default. 1821, 108, § 3.

Money recovered, to be appropriated to making up the records. Further liability of the clerk, in case, &c. 1821, 108, § 3.

Penalty for exacting illegal fees.

SECT. 13. Every clerk shall, within twenty days after the adjournment of any court, at which any fine, forfeiture or bill of costs has accrued to the state, transmit to the secretary of the state, to be laid before the governor and council, a certificate of all fines, forfeitures and bills of costs, naming the court and term thereof, when the same accrued, the names of those against whom they were awarded, and the names of the officers accountable for them to the state.

SECT. 14. The justices of the judicial courts shall inspect the records of the clerks of their respective courts, and if they are found deficient, shall, in writing, certify the fact to the treasurer of the state, that the official bond of such clerk may be put in suit by him.

SECT. 15. The money, recovered in such suit shall be applied to complete the deficient records, under the direction of the judge or judges of the court, where such deficiency shall occur; and if the amount, so recovered, shall be more than sufficient for the purpose aforesaid, the balance shall enure to the use of the state; but, if the amount, so recovered, shall be insufficient to make up such records, the balance may be recovered by the treasurer of the state, in a special action on the case.

SECT. 16. Any clerk of the courts, who shall exact or receive more fees, than are allowed by law, shall forfeit fifty dollars for each offence; to be recovered in an action of debt, by any person prosecuting therefor, to his own use, or by indictment, one half to the use of the state, and the other half to the complainant.

CHAPTER 101.

OF THE ATTORNEY GENERAL AND HIS DUTIES.

- SECT. 1. Appointment and oath of office.
- 2. His duty to attend the sessions of the supreme judicial court.
- 3. Instructions to the county attorneys, in his absence.

- SECT. 4. To receive no fee for official services; nor to act as counsel or attorney, in cases incompatible with his duties.
- 5. When to require attendance of witnesses.
- 6. Annual report to the governor and council.

Appointment, and oath of office.

SECTION 1. The attorney general shall be appointed by the governor and council, and take and subscribe the oaths, required by the constitution.

His duty to attend the sessions of the supreme judicial court. 1821, 100, § 1.

SECT. 2. It shall be his duty to attend the sessions of the supreme judicial court, except in those cases, where the terms of the court now are, or may be so established, and so far interfere with each other, as to prevent a compliance with the above requirements for the discharge of the duties of his office.

Instructions to the county attorneys, in his absence. 1821, 100, § 1.

SECT. 3. When he is necessarily absent from any session of said court, he shall give all needful instructions to the state's attorney for the county, in which such court shall be then sitting, as well as all proper instructions to said attorneys, at other times.

**SECT. 4.** He shall not receive any fee or reward from, or on behalf of any prosecutor, for any of his official services; or during the pending of such prosecution, be engaged as counsel or attorney, for either party, in any civil action, depending essentially on the same facts.

**SECT. 5.** It shall be his duty, when criminal prosecutions shall be continued, to cause the witnesses on the part of the state to be recognized, to appear on the days specified in the ninth section of chapter, one hundred and fifty two, unless otherwise directed by the court.

**SECT. 6.** He shall, in the month of December annually, make to the governor and council a report of the amount and kind of official business, by him done in the year preceding; the number of persons prosecuted, either by himself or the several county attorneys, the offences for which such prosecutions were had, the results thereof, and the punishment awarded in each case, with such other particular statements or suggestions, as he may deem interesting.

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To receive no fee for official services, nor to act as counsel or attorney, in cases incompatible.

1821, 100, § 2.  
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When to require the attendance of witnesses.

1831, 509, § 2.

Annual report to the governor and council.

1839, 408, § 2.

## CHAPTER 102.

### OF COUNTY ATTORNEYS.

**SECT. 1.** Their appointment and oath.

2. Duties.

3. Not to act as counsel or attorneys in certain cases.

4. Duty as to fines, forfeitures and costs.

5. And as to sheriffs' bonds. Penalty.

**SECT. 6.** Courts may appoint substitutes, in case of necessary absence, &c.

7. Annual reports to the attorney general.

8. Present incumbents, to remain in office.

**SECTION 1.** There shall be appointed in each county, by the governor and council, an attorney for the state in such county, who shall be duly sworn.

Their appointment and oath.  
1821, 100, § 1.

**SECT. 2.** He shall attend all the several terms of the district court in such county, and act for the state and for such county, in all cases, in which the state or the county may be a party; and in the absence of the attorney general shall act for the state, in the supreme judicial court, in the county for which he is attorney, under such directions as may be given him by the attorney general.

Duties.  
1821, 100, § 1.

**SECT. 3.** Each county attorney shall be under the same restrictions, as are imposed on the attorney general, in the fourth section of chapter, one hundred and one.

Not to act as counsel or attorney in certain cases.  
1821, 100, § 2.

**SECT. 4.** It shall be his duty to enforce the collection and payment, to the treasurer of the same county, of all fines, forfeitures and bills of costs, that shall have accrued to the state; and enforce in sheriffs, coroners and constables, a faithful performance of the duties of their respective offices, in relation thereto; and to give information to the court of all defaults and failures to pay into the treasury such fines and forfeitures as shall accrue to the county.

Duty as to fines, forfeitures, and bills of costs.  
1830, 464, § 4.

**SECT. 5.** He shall annually move the county commissioners, at

And as to sher-

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sheriffs' bonds.  
Penalty.  
1821, 91, § 2.

their meeting next following the third Tuesday of June, to consider and examine the sufficiency of the security, given by the sheriffs, for the faithful discharge of their duties, and accountability for the neglect and misdoings of their deputies; and, if he shall neglect to perform such duty, or the duty required of him in the preceding section, he shall forfeit and pay a sum, not exceeding one hundred dollars, for the use of the state, to be recovered in the name of the state treasurer, in an action of debt.

Courts may appoint substitutes in case of necessary absence, &c.

SECT. 6. When the office of attorney for the state in any county, may happen to be vacant, at any session of the district court in such county, or such attorney for the county is detained from court by sickness, or other satisfactory reason, the said court may appoint some proper person of the same county, to perform, during the session, the duties of the office, so far as they respect the criminal business of the court.

Annual reports to the attorney general.  
1839, 408, § 2.

SECT. 7. The several county attorneys shall annually, in the month of November, make to the attorney general a report of the amount and kind of official business by them done respectively, in the preceding year, the number of persons prosecuted, the offences for which such prosecutions were had, the results thereof, and the punishment awarded in each case, with such particular statements and suggestions as he may deem interesting.

Present incumbents, to remain in office.

SECT. 8. The county attorneys, now in office, shall continue to hold their offices, according to the tenor of their respective commissions.

CHAPTER 103.

OF ATTORNEYS AT LAW.

- SECT. 1. Supreme judicial court to prescribe rules for admission, and appoint examiners.
- 2. Examiners to be sworn.
- 3. To give certificate to candidates, if found qualified.
- 4. Such candidates admitted to practice in the supreme judicial and district courts.
- 5. Duty to be paid. Oath.

- SECT. 6. Right of parties to employ counsel or appear personally.
- 7. Persons not regularly admitted to practice, not entitled to recover fees.
- 8. Parties may authorize any person to act as their attorney, by special powers.
- 9. Justices, in certain cases, not to act as attorneys.

Supreme judicial court to prescribe rules for admission, and appoint examiners.  
1837, 279, § 2.  
1838, 304.

SECTION 1. The justices of the supreme judicial court shall prescribe rules, for the admission of attorneys to practice law in the courts of this state; and also prescribe a course and series of studies to be pursued by persons, who may be candidates therefor; and shall, at the law term for each county, annually, appoint for and within such county, a committee of three judicious men, learned in the law, each of whom shall be a counselor, of said court, whose duty it shall be to examine all applicants, for admission to practice law, who may be residents of the county, for which the committee was appointed.

**SECT. 2.** Such committees shall, prior to entering upon the duties of their office, take and subscribe an oath, in open court, that they will faithfully and impartially perform the duties of said office, according to their best skill and judgment; and they shall continue in office, until they shall be notified by the clerk, that others have been appointed and sworn in their stead.

Examiners to be sworn. 1837, 279, § 3.

**SECT. 3.** Such committee, if on examination it shall appear to them, that the applicant is of a good moral character, and is well affected to the government and constitution of this state, and of the age of twenty one years, and has pursued the course of studies, prescribed by the court, as mentioned in the first section, and has acquired a thorough understanding thereof, and is of adequate legal and literary acquirements, to commence the practice of law, as aforesaid, shall give him a certificate, in writing by them signed, certifying these facts.

To give certificates to candidates, if found qualified. 1821, 89, § 1. 1829, 279, § 2.

**SECT. 4.** When the person, so holding such certificate, shall present the same to the district court of the county, where such person resides, on complying with the requisitions specified in the following section, he shall be admitted to practice law in said court, and in the supreme judicial court, in all cases of law and fact.

Such candidates admitted to practice in the supreme judicial and district courts. 1837, 279, § 2. 1838, 318. 16 Maine, 224.

**SECT. 5.** No person shall be admitted to practise as an attorney, in any court of justice in this state, until he shall have paid the duty by law required, and shall in open court have taken and subscribed the oath, to support the constitution of the United States, and also taken the following oath, viz :

Duty to be paid. Oath. 1821, 89, § 1. 1 Pick. 475.

"You solemnly swear, that you will do no falsehood, nor consent to the doing of any in court, and if you know of an intention to commit any, you will give knowledge thereof to the justices of the court or some of them, that it may be prevented; you will not, wittingly or willingly, promote or sue any false, groundless or unlawful suit, nor give aid or consent to the same; you will delay no man for lucre or malice, but you will conduct yourself, in the office of an attorney within the courts, according to the best of your knowledge and discretion, and with all good fidelity, as well to the courts, as your clients. So help you God."

**SECT. 6.** The parties may plead and manage their own causes personally, or by the assistance of such counsel, as they shall see fit to engage; but the plaintiff or plaintiffs in any suit shall not be allowed to manage their cause by more than two attorneys, nor shall any defendant be allowed to employ a greater number.

Right of parties to employ counsel, or appear personally. 1821, 89, § 2, 3.

**SECT. 7.** No person, who shall hereafter commence practice, as an attorney or counselor at law, in any other state or place, or in any court in this state, without such previous qualifications and course of studies, or taking such oaths as aforesaid, or without paying such excise duty, shall be entitled to demand or recover any remuneration for his professional services, rendered in this state.

Persons not regularly admitted to practice, not entitled to recover fees. 1821, 89, § 1.

**SECT. 8.** Any citizen, of a good moral character, may appear on behalf of either party in a suit, by virtue of a letter of attorney for that purpose, produced by him in court, as fully as a sworn attorney may do.

Parties may authorize any persons to act as their attorneys, by special powers. 1821, 89, § 3.

**SECT. 9.** No justice of the peace shall hear or determine any civil action, commenced by himself or his order, and every such

Justices, in certain cases, not

**CHAP. 103.** action shall abate; or be subsequently employed as co attorney in any cause, tried before himself.

to act as attorneys.  
1821, 89, § 4.  
1825, 308.

## CHAPTER 104.

### OF THE POWERS AND DUTIES OF SHERIFFS, DEPUTY SHERIFFS, CORONERS, CONSTABLES, AND OF CORONERS IN CIVIL ACTIONS.

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| <p><b>SECT. 1.</b> Sheriff and coroner to continue Oath and bond of sheriff.</p> <p><b>2.</b> Sheriff's bond to be approved by county commissioners, and left with the state treasurer.</p> <p><b>3.</b> Sufficiency of security of sheriff and coroners, to be annually examined by the commissioners.</p> <p><b>4.</b> If adjudged insufficient, a new bond to be given.</p> <p><b>5.</b> Forfeiture, if sheriff neglect to give such bond. If coroner, office vacated.</p> <p><b>6.</b> The sheriff also liable to be removed.</p> <p><b>7.</b> In what cases the governor and council may require a new bond.</p> <p><b>8.</b> Coroners, on appointment, to take oaths of office, and give bonds.</p> <p><b>9.</b> Appointment of sheriff. Jailer to remain in office, during vacancy of office of sheriff; or a new jailer may be appointed.</p> <p><b>10.</b> Sheriff to appoint his deputies and jailer, by a writing to be recorded. Oath. Discharge. Sheriff answerable for them.</p> <p><b>11.</b> Sheriff on appointment to notify coroners.</p> <p><b>12.</b> New bonds required of sheriff or coroner on application of his sureties.</p> <p><b>13.</b> Of suits, instituted on bonds of sheriff or coroner.</p> <p><b>14.</b> Demand previously to be ascertained by a judgment.</p> <p><b>15.</b> Against whom judgment to be entered, if for defendant.</p> <p><b>16.</b> If against the defendant, the other party, in interest, to be named in the execution.</p> <p><b>17.</b> Any person entitled to a copy of the bond. When the original may be required.</p> <p><b>18.</b> Survivorship of actions, against sheriffs or their deputies.</p> <p><b>19.</b> Duty of sheriff and deputies to serve precepts. Their fees to be paid or secured in advance.</p> | <p><b>SECT. 20.</b> Sheriff or deputy may vice, though his town is vacated.</p> <p><b>21.</b> Sheriffs, &amp;c. when they execute precepts in their own towns.</p> <p><b>22.</b> Also deputies, when office is vacated.</p> <p><b>23.</b> Sheriff to have the jails.</p> <p><b>24.</b> Jailers holding over, as nine, responsible on their own bond.</p> <p><b>25.</b> County commissioner point a jailer, in case of sheriff nor jailer.</p> <p><b>26.</b> Defaults of deputies, death, &amp;c. of sheriff, &amp; sheriff's bond.</p> <p><b>27.</b> Penalty, if sheriff or deputy money collected, after execution.</p> <p><b>28.</b> Sheriff not liable to be removed for property only.</p> <p><b>29.</b> Executions issued a property only.</p> <p><b>30.</b> Duty of governor to return if returned, not satisfied.</p> <p><b>31.</b> After removal, execution in common form.</p> <p><b>32.</b> Power of sheriffs, &amp;c. aid. Forfeiture, for assistance.</p> <p><b>33.</b> If a person die in prison jailer.</p> <p><b>34.</b> Constables' power to process in personal actions.</p> <p><b>35.</b> Bonds previously required in case.</p> <p><b>36.</b> Remedy thereon to be titled.</p> <p><b>37.</b> In what cases a constable out of his own town.</p> <p><b>38.</b> Officers prohibited from attorneys.</p> <p><b>39.</b> Sheriff to keep a calendar.</p> <p><b>40.</b> On vacating his office, the custody of the jail his successor is qualified.</p> <p><b>41.</b> Warrants, &amp;c. to be kept, and delivered over</p> |
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- SECT. 42.** Of the cleanliness of the jail and prisoners.
43. Sheriff chargeable for all escapes, from insufficiency of the jail.
44. County commissioners may raise the amount due, by assessment.
45. Sheriff's right of action against the county.
46. Right of commissioners to defend. Action to be continued in case, &c.
47. How execution may be levied. Remedy of the party on whom levied.
48. List of prisoners, &c. to be returned by jailer to the supreme judicial and district courts.
49. Certain prisoners to be kept separate from the others.
50. Penalty for neglect. Spirituous liquors prohibited to persons, accused or convicted of crimes.
51. Liability for negligent escapes. Proviso, in case of debtors.
- SECT. 52.** Prisoners committed by the United States' courts to be received and kept.
53. Appropriation of penalties.
- 54, 55. When officers may execute warrants, out of their county.
56. Of fees receivable by sheriffs, of their deputies.
57. Deputies to make annual returns of their emoluments of office to the sheriff.
58. Of the sheriff's annual return, and settlement with the county treasurer.
59. What sums may be retained by sheriffs, in their respective counties.
- 60, 61. Of coroners' powers to serve precepts.
62. Jailer to reside in the house provided for him, as such, if good and sufficient.

**SECTION 1.** All sheriffs and coroners, now in office, shall continue to hold their offices according to the tenor of their respective commissions; and every person, hereafter appointed to the office of sheriff, shall be duly sworn; and, if appointed sheriff of either of the counties of York, Cumberland, Lincoln, Kennebec or Penobscot, shall, within sixty days after having received his commission, give bond to the treasurer of the state, and his successors in said office, with as least three sufficient sureties, in a sum not less than forty thousand dollars; and every person, appointed sheriff of either of the other counties, shall give bond, as aforesaid, in a sum not less than twenty five thousand dollars; which bonds shall be conditioned for the faithful performance of the duties of their respective offices, and to answer for all neglects and misdoings of their respective deputies.

Sheriffs and coroners to continue. Compensation. Oath and bond of sheriff. 1820, 91, § 1.

**SECT. 2.** Every sheriff, having executed such bond, shall, within said term, file the same in the office of the clerk of the county commissioners in the county, of which he is appointed sheriff, and it shall be presented to said commissioners at their then next meeting for approval, and, after being so approved and adjudged sufficient, the clerk shall record the same, and certify the fact on said bond; and the clerk shall thereupon deliver said bond to said sheriff, retaining a copy thereof, who shall deliver the original to the treasurer of the state, within twenty days after its approval, to be filed in his office.

Sheriff's bond to be approved by county commissioners, and left with the state treasurer. 1820, 91, § 1. 2 Fairf. 241. 1 Pick. 271.

**SECT. 3.** The county commissioners in each county, at their first meeting after the third Tuesday of June, shall, on motion of the county attorney, annually consider and examine as to the sufficiency of the sureties given by the sheriff and the coroners in their respective counties, and cause a record made, of their determination, by their clerk, who shall certify the same to the state treasurer within thirty days.

Sufficiency of security of sheriff and coroners, to be annually examined by the commissioners. 1820, 91, § 2.



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If adjudged insufficient, a new bond to be given.  
1820, 91, § 2.

Forfeiture, if sheriff neglect to give such bond. If coroner, office vacated.  
1820, 91, § 3.

Sheriff also liable to be removed.  
1820, 91, § 3.

In what cases, the governor and council may require a new bond.  
1820, 91, § 4.

Coroners, on appointment, to take oaths of office, and give bonds.  
1820, 91, § 5.  
1829, 435.  
14 Mass. 167.

Appointment of sheriff. Jailer to remain in office, during vacancy of office of sheriff; or a new Jailer may be appointed.

SECT. 4. If the security of any sheriff or coroner shall be adjudged insufficient, said clerk shall, within ten days, certify the same to such sheriff or coroner, who shall, within twenty days after such notice, give a new bond with sufficient sureties, to be filed in the office of the clerk of the county commissioners, and approved as aforesaid; and then filed in the office of the treasurer of the state.

SECT. 5. Any sheriff, neglecting to give the security, required by the first or fourth section of this chapter, shall forfeit the sum of one hundred and fifty dollars, for each month's neglect, to the use of the state, to be recovered by the treasurer in an action of debt; and it shall be the duty of the attorney general to prosecute for the same: every coroner, neglecting to give a new bond, as provided in the preceding section, shall be deemed to have vacated his office.

SECT. 6. The name of such sheriff, neglecting to give security as aforesaid, shall be certified by the county commissioners of the same county to the governor and council, and to the attorney general; and, thereupon, the governor, with advice of the council, shall remove such sheriff from office, unless reasonable cause for such neglect shall be shown to the governor and council, or unless, within twenty days after the certificate shall be made, he shall give or renew his security, to the satisfaction of the governor and council.

SECT. 7. Whenever it shall appear from a statement made by the state treasurer, that moneys, due to the state on warrants, or any other sums or balances are in the hands of any sheriff, and the names of the sureties of such sheriff are also certified by the treasurer; and it shall appear to the governor and council, that any such sureties have become insufficient, or have removed from the state, they, or any of them, may require such sheriff to give a new bond with sufficient sureties, within sixty days after notice given to him for the purpose, to be filed as aforesaid, and, on his neglecting so to do, the office of such sheriff shall become vacant, and some other person shall be appointed to fill the office.

SECT. 8. Every person, who shall be hereafter appointed a coroner, shall, before proceeding to execute the duties of his office, be duly sworn; and shall also give bond to the treasurer of the state, with sufficient sureties to the satisfaction of the county commissioners, in their respective counties, for the faithful performance of the duties of his office; which bond shall be transmitted to the treasurer of the state in the same manner, as sheriffs' bonds: but any coroner's bond given with sureties, as by law required, which shall be approved as sufficient, by the certificate of two of the county commissioners of the same county, and filed with the clerk of the judicial courts of the county, shall be deemed good and sufficient, to authorize such coroner to discharge the duties of his office, until the first day of the next stated meeting of said county commissioners, and - not afterwards, unless approved by them.

SECT. 9. Whenever a vacancy in the office of sheriff shall exist, the governor, with advice and consent of the council, shall appoint and commission some proper person to fill the vacancy; and during such vacancy any jailer, duly appointed, shall continue in office, as such, and retain the custody and charge of the jail of which he

had the rule and custody under the sheriff, and of all prisoners in such jail, or who may be committed to his custody, until a new sheriff shall be appointed and duly qualified; or until the governor and council shall remove such jailer and appoint another person: which removal and appointment, the governor, by advice of the council, is authorized to make, during the vacancy in the office of sheriff; and the jailer, so appointed, shall give bond in the same manner as is required of a sheriff, for the faithful discharge of the duties of his office.

**SECT. 10.** Every sheriff may appoint his own deputies and jailer, who shall be duly sworn; and such appointment shall be in writing, under the hand of the sheriff appointing him, and recorded in the office of the clerk of the judicial courts in the county, for which such deputy sheriff or jailer is appointed; and no appointment or discharge of either of said officers shall be valid, until so lodged or recorded, except by operation of law, or vacancy in the office of sheriff; and every discharge of either of such officers shall be in writing, and recorded as aforesaid; for recording which appointment or discharge the sheriff shall pay the clerk twenty five cents: and the sheriff shall be answerable for the misconduct, and all neglects of his said deputies or jailer, while in office.

**SECT. 11.** Every person, appointed sheriff of any county, shall give notice thereof, immediately, to the several coroners of the same county.

**SECT. 12.** Whenever any surety, upon the official bond, [*for any neglects or misdoings, which may occur after such new bond shall have been filed and accepted.*]\* of any sheriff or coroner, or the heirs, executors, or administrators of such surety, shall petition the county commissioners, in the county of such sheriff or coroner, to be discharged from such bond, the court shall cause such sheriff or coroner to be served with an attested copy of the petition, and may require him to give a new bond to their satisfaction; and, upon such new security being given, such surety, or his legal representatives, shall be free from any further responsibility on such bond, [*for any neglects or misdoings which may occur after such new bond shall have been filed and accepted.*]

**SECT. 13.** When the condition of the official bond of any sheriff or coroner shall be broken, to the injury of any person, such person may, at his own expense, institute an action, in the name of the treasurer, in the county, where such sheriff or coroner respectively shall have been commissioned to act, and prosecute the same to final judgment and execution; and, in such case, the writ shall be indorsed by the name and place of residence of the person, for whose benefit the suit is commenced, or with the name of his attorney; which indorser shall be alone answerable for all costs.

**SECT. 14.** But no such action, on such official bond, shall be instituted, until the party commencing it shall have recovered judgment against such sheriff or coroner, his executors or administrators, for the injury complained of, and sustained by such person, or obtained a decree of the judge of probate, allowing a claim for the

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1821, 92, § 1.

Sheriff to appoint his deputies and jailer, by a writing to be recorded. Oath. Sheriff answerable for them. 1829, 445, § 7. 1 Mass. 530. 13 Maine, 72. 2 Pick. 276.

Sheriffs, on appointment, to notify coroners. 1821, 93, § 1.

New bonds required of sheriff or coroner, on application of his sureties.

Of suits, instituted on bonds of sheriff or coroner. 1820, 91, § 6.

Demand previously to be ascertained by a judgment. 1820, 91, § 6.

\* The words in brackets were an amendment to the original bill, and appear to have been misplaced in engraving.

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Against whom judgment to be entered, if for defendant. 1820, 91, § 6.

If against the defendant, the other party, in interest, to be named in the execution. 1820, 91, § 7.

Any person entitled to a copy of the bond.

When the original may be required. 1821, 92, § 2.

Survivorship of actions, against sheriffs or their deputies. 1821, 92, § 2.

Duty of sheriffs and deputies to serve precepts. Their fees to be paid or secured in advance. 1821, 92, § 1. 1 Greenl. 361. 4 Pick. 405.

Sheriff or deputy may make service, though his town be interested. 1821, 92, § 1. 14 Mass. 216. 1 Greenl. 82.

Sheriffs, &c. when removed, may execute precepts in their hands. 1821, 92, § 1.

Also deputies, when office of sheriff is vacated. 1821, 92, § 1. 13 Mass. 295.

Sheriff to have the custody of jails. 1821, 92, § 1.

Jailers holding over, as in § 9, responsible on their bond. 1830, 461, § 1.

County commissioners may

cause aforesaid; and such judgment or decree, or so much same, as shall be unsatisfied, with the interest thereon, shall amount of damages thereon, for which execution shall issue.

SECT. 15. If, in such action on the official bond of a sheriff or coroner, judgment shall be rendered in favor of the defendant, shall be so rendered against the party, for whose benefit the same was brought.

SECT. 16. When judgment is rendered, in such action on the official bond, in favor of the treasurer, the name of the person, for whose use the action was commenced, shall be expressed and set forth in the execution issuing on such judgment.

SECT. 17. The treasurer shall deliver an attested copy of the sheriff's or coroner's bond to any one, applying and paying for the same, and such copy shall be received as competent evidence, in an action relating to the same, unless, when the execution of the bond is disputed, in which case, the court may order the treasurer to produce the same in court, for the purposes of such trial.

SECT. 18. Any actions for the neglect or misdoings of a sheriff, or any of his deputies, may be sued against the executive administrators of such sheriff, in like manner, as if the action were brought against the sheriff, as if the action were brought at common law.

SECT. 19. Every sheriff, and each of his deputies, shall execute, within his county, all writs and precepts, to be directed and committed, and issued by lawful authority; and his legal fees for service shall first be paid or secured to him, if the legal fees be not paid or secured to the officer, when the writ or process is delivered to him, he shall, without delay, deliver the writ to the plaintiff or attorney, so offering it; or, if sent to him by mail, or otherwise, shall put the same into some post directed to the person sending the same, within twenty-four hours, or, otherwise, he shall be deemed to have waived his right to receive his fees before service.

SECT. 20. Such sheriff or deputy may serve any writs or precepts, mentioned in the preceding section, in cases where a plantation, parish, religious society or school district, is a party interested, though he may, at the time, be a member of the corporation interested.

SECT. 21. All sheriffs and their deputies may execute all precepts in their hands, at the time of their removal from office.

SECT. 22. In every vacancy in the office of sheriff in any county, every deputy under him, having any writ or precept in his hands, at the time such vacancy may happen, shall have the authority, and be under the same obligation, to serve the same, and return it, as if such sheriff had continued in office.

SECT. 23. The sheriff of each county shall have the custody and charge of the jail or jails therein, and shall keep the same personally, or by his deputy.

SECT. 24. While any jailer shall continue to hold his office, the virtue of the ninth section of this chapter, his defaults and misdoings shall be adjudged a breach of the official bond of such sheriff.

SECT. 25. If the office of jailer become vacant, while the office of sheriff is vacant, the county commissioners, in the same county,

are empowered to appoint a jailer, who shall give bond, in like manner as a sheriff is required to do, and shall continue in office, if his appointment shall be confirmed at their next meeting, during the vacancy in the office of sheriff, and until such jailer shall be removed, and a new jailer shall be appointed by the governor and council.

**SECT. 26.** The defaults, or misfeasances in office, of any deputy sheriff, after the death, resignation or removal from office, of the sheriff, who appointed him, shall be adjudged a breach of the condition of the sheriff's official bond.

**SECT. 27.** Any sheriff or his deputy, who shall unreasonably refuse or neglect to pay, to any person, moneys received by him, upon execution to the use of such person, upon demand made therefor, shall pay five times the lawful interest of such money, so long as he shall unreasonably detain it.

**SECT. 28.** No sheriff shall be arrested on mesne process or execution, in a civil action.

**SECT. 29.** When judgment shall be rendered against any sheriff, either in his official or private capacity, the execution on such judgment shall be issued against his goods, chattels and lands, but not against his body.

**SECT. 30.** When such execution shall be returned not satisfied, the creditor may file before the governor and council, an attested copy of such execution, and the return thereon, and also serve such sheriff with a copy of such copy filed, attested by the secretary, with notice under the hand of the secretary, of the day on which such copy was filed, and if such sheriff shall not, within forty days next after being served with such copy and notice, pay the creditor his full debt, with reasonable cost for copies and service of them, the governor, with advice of the council, shall remove such sheriff from office, and appoint some other person to the same.

**SECT. 31.** When a sheriff shall be removed from his office, the clerk of the court, from which such executions have been issued, and returned not satisfied, shall be empowered, as soon as another sheriff shall be appointed and legally qualified, to issue alias executions, in common form, against the body, as well as the goods, chattels and lands of such person, so removed.

**SECT. 32.** Any sheriff, deputy sheriff, coroner or constable, being in the execution of the duties of his office, in any criminal cases, or for the preservation of the peace, or for apprehending or securing any person for the breach of the same, shall have authority to require suitable aid therein; and may require like aid, in case of escape or rescue of persons arrested on civil process; and any person, being so required to aid either of said officers, who shall neglect or refuse so to do, on due conviction thereof, shall pay to the use of the county, not less than three, nor more than fifty dollars; and, if the offender be unable, or shall not forthwith pay such fine, the court may punish him by imprisonment, not exceeding thirty days.

**SECT. 33.** When any person shall die in prison, in any county in this state, it shall be the duty of the jailer or sheriff, to deliver

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appoint a jailer, in case there be no sheriff nor jailer.  
1830, 461, § 2.

Defaults of deputies after the death, &c. of sheriff, covered by sheriff's bond  
1821, 92, § 2.

Penalty, if sheriff or deputy detain money collected, after demand.  
1821, 92, § 3.  
3 Mass. 249.  
7 Mass. 464.  
8 Greenl. 133.  
16 Pick. 387.  
17 Pick. 462.

Sheriff not liable to be arrested.

1821, 92, § 4.  
Executions issued against his property only.  
1821, 92, § 4.

Power of governor to remove him, if returned not satisfied.  
1821, 92, § 4.

After removal, executions to issue in common form.  
1821, 92, § 4.

Power of sheriffs, &c. to require aid. Forfeiture for refusing to assist.  
1821, 92, § 7.

If a person die in prison, duty of jailer.  
1821, 92, § 5.

**CHAP. 104.** the body of the deceased to his friends, if requested; and, requested, to bury the same in the common burying ground the expenses thereof shall be paid by the town, in which deceased had a legal settlement, if he had been an inhabitant of the state, and if not, the expenses shall be paid out of the treasury.

Constable's power to serve process in personal actions. 1821, 92, § 9. 5 Mass. 260. 15 Mass. 389.

**SECT. 34.** Any constable is hereby authorized to serve any person in the town, to which he belongs, any writ or process in any personal action, where the damage sued for and demanded shall not exceed one hundred dollars, including all precepts in a town in which he may reside, is a party or interested person, and he shall make due return thereof, according to the manner thereof.

Bonds previously required, in such case. 1821, 92, § 9. 1836, 212. 5 Greenl. 76. 2 Fairf. 332.

**SECT. 35.** Every constable, before he shall serve any writ of execution, shall give bond to the inhabitants of his town, in the sum of five hundred dollars, with two sureties, sufficient in the opinion of the selectmen of the town, who shall indorse their approval on said bond, and in their own hands, for the faithful performance of the duties of his office, as to all processes, by him served or executed; and for every process he shall serve before giving bond, he shall forfeit and pay, not less than twenty, nor more than fifty dollars, to the use of, and recoverable by, any person who shall sue for the same.

Remedy thereon to parties entitled. 1821, 92, § 9.

**SECT. 36.** All persons, suffering by the faults or mistakes of any constable, shall have remedy on his bond, as is provided in the case of sheriffs' bonds, and similar proceedings shall be had in such cases, such change being made, as to render the process effective.

In what cases, a constable may act out of his own town. 1821, 92, § 10.

**SECT. 37.** Every constable shall have authority, in the execution of any precept, to take any person directed from lawful authority, to be taken into custody, and things which they shall have taken into the custody, to the justice who issued the precept, or to the common jail or house of correction of the county, where such constable is an inhabitant.

Officers prohibited from acting, as attorneys. 1821, 89, § 5. 6 Pick. 483. 10 Pick. 45.

**SECT. 38.** No sheriff, deputy sheriff, or constable, shall be permitted to appear before any court, or justice of the peace, as attorney, or in behalf of, or assisting or advising any party, in any suit, nor be allowed to draw any writ, plaint, declaration, or process, for any other person; and all such acts, done by either of them, shall be void.

Sheriff to keep a calendar of prisoners. 1821, 110, § 2.

**SECT. 39.** Every sheriff shall keep, in a bound book, prepared for that purpose, a true and exact calendar or register of all prisoners, committed to the prison under his care, containing, distinctly and fairly registered, the names of all prisoners, who shall, from time to time, be committed to such prison, their places of commitment, additions, time of their commitment, for what cause, and by what authority; and a particular description of the persons of those committed for criminal offences; and also, from time to time, as soon as a prisoner shall be discharged, he shall register, in said book, the name and description of the person aforesaid, the time when he was discharged; and the time and manner of any prisoner's escape.

On vacating his office, to re-

**SECT. 40.** Every sheriff shall be held answerable for the

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ery over to his successor of all prisoners, which may be in his custody at the time of his removal ; and, for that purpose, shall retain the keeping of the jail in his county, and the prisoners therein, until his successor shall be appointed and qualified as the law directs.

tain the custody of the jail, &c. till his successor is qualified. 1821, 92, § 4. Warrants, &c. to be filed, safely kept, and delivered over. 1821, 110, § 3.

SECT. 41. All warrants, mittimuses, processes, and other official papers, or attested copies of them, by which any prisoner shall have been committed or liberated, shall be regularly filed in order of time ; and, with the calendar before mentioned, shall be safely kept in a suitable box, and on expiration of his commission, or on his death, resignation or removal, be, by the sheriff or his personal representative, delivered over to his successor, on penalty of forfeiting, for his neglect, two hundred dollars, to the use of the county.

SECT. 42. Every sheriff shall see, that the jail in his county shall be kept as clean and healthy as may be ; and cause the walls thereof to be white washed, in April or May annually, and as often as the county commissioners shall order, at the expense of the county ; and pay strict attention to the personal cleanliness of the prisoners.

Of the cleanliness of the jail and prisoners. 1821, 110, § 6.

SECT. 43. When any prisoner shall escape, through the insufficiency of the jail, or the negligence of the sheriff or jailer, the sheriff shall stand chargeable to the creditor or other person, at whose suit he was committed, or to whose use any forfeiture was adjudged against such prisoner.

Sheriff chargeable for all escapes, from insufficiency of the jail. 1821, 110, § 14.

SECT. 44. When such escape shall happen through the insufficiency of the jail, the county commissioners may order the county treasurer to pay over, to the sheriff of the county, the amount due to such creditor.

County commissioners may raise the amount due by assessment. 1821, 110, § 14.

SECT. 45. If the county commissioners shall not make such order, within six months after the demand shall be laid before them, the sheriff may bring his action on the case against the inhabitants of such county, to be tried in the same county, or one of the next adjoining counties ; an attested copy of the writ being left with the county treasurer, thirty days before the sitting of the court, to which it shall be returnable, shall be a sufficient service.

Sheriff's right of action against the county. 1821, 110, § 14.

SECT. 46. The county commissioners may appoint an agent, to appear and defend the action ; and, when there shall be no meeting of said commissioners, between the time of the service and the return day of the writ, the action shall be continued to the next term of the court, saving all advantages to the defendants.

Right of commissioners to defend. Action to be continued in case, &c. 1821, 110, § 14.

SECT. 47. If, in such action, judgment be rendered against the county, the debt may be levied by execution upon the estate of any inhabitant, who shall have like remedy against the county, to recover the moneys, so levied of his estate.

How execution may be levied. Remedy of the party on whom levied. 1821, 110, § 14.

SECT. 48. Every jailer shall, at the opening of the supreme judicial court, and district court, in his county, return a list of prisoners in his custody, certifying the cause for which, and the person by whom, committed, and the names of all persons, who shall be committed, during the sitting of either of said courts, and the cause of commitment ; and shall have the calendar of prisoners in court for its inspection ; and, for neglecting so to do, he shall be fined, at the discretion of the court.

List of prisoners, &c. to be returned by jailer to the supreme judicial and district courts. 1821, 110, § 4.

SECT. 49. Every jailer or prison keeper shall keep prisoners

Certain prison-

CHAP. 104.

ers to be kept separate from the others. 1821, 110, § 7.

Penalty for neglect. Spirituous liquors prohibited to persons accused, or convicted, of crimes. 1821, 110, § 9, 10.

Liability for negligent escapes. Provision, in case of debtors. 1821, 110, § 12.

Prisoners committed by the United States' courts, to be received and kept. 1821, 110, § 15.

Appropriation of penalties. 1821, 110, § 12.

When officers may execute warrants, out of their county. 1824, 244, § 1.

committed for debt, separate and apart from felons, convicts and prisoners, charged with felony or infamous crimes; and also all minors so committed, and all prisoners upon a first charge, with or without conviction of any crime, separate from those, who are notorious offenders, or have been convicted more than once, of any felony or infamous crime, as the construction or state of the prison will admit.

SECT. 50. If any prison keeper shall violate any of the provisions of the preceding section, or shall voluntarily or negligently suffer any prisoner in his custody, charged with, or convicted of any crime, to have any spirituous liquors, or in part spirituous, unless the physician authorized to attend the sick, in such prison, shall in writing certify, that such prisoner's health requires it, and prescribe the quantity, shall, in each case, for the first offence, forfeit twenty five dollars, to be recovered by indictment, for the use of the county, or by any person who shall sue for the same, to his own use; and, for a second offence, he shall forfeit fifty dollars, to be recovered as aforesaid; and shall be removed from office, and be rendered incapable of holding the office of sheriff, deputy sheriff or jailer, for the term of five years; and, if the keeper of any jail, or other person, shall give, sell, or deliver to any person committed to jail, on mesne process or execution, or to any other person for his use, any spirituous liquors, without the consent in writing, of the overseers of the poor of the town, where the jail is situated, he shall forfeit not less than five, nor more than ten dollars, to be recovered on complaint, before a justice of the peace, one half to the use of said town, and the other to the prosecutor.

SECT. 51. If any jailer or prison keeper shall, through negligence, suffer any prisoner, charged with any crime, to escape, he shall pay such fine as the court, before which he may be convicted shall in their discretion inflict, according to the nature of the offence charged against the escaped prisoner; if any person, committed for debt, shall escape from prison, and the sheriff or jail keeper shall within three months next after the escape, recover the prisoner, and return him to the prison, then the sheriff shall be liable to no more than the costs of any action, which may have been commenced against him for the escape.

SECT. 52. The keepers of the several jails, in this state, shall take the custody of, and safely keep, all prisoners committed under the authority of the United States, until discharged by law; and the penalties provided by law for the safe keeping of prisoners, committed under the laws of this state.

SECT. 53. All fines, arising from the breaches of any of the preceding sections of this chapter, except those otherwise appropriated, shall be applied to the use of building and repairing the jail or jails, in the county where the offence was committed, and shall be paid to the treasurer for that purpose.

SECT. 54. A warrant duly issued by a justice of the peace for any supposed offence, committed in his county, or under the act for the maintenance of bastard children, may be executed by the sheriff to whom it may be directed, or his deputy, or coroner or constable, though the person charged shall have removed or gone into another

county, before or after the warrant was issued; and such sheriff, or coroner or constable may pursue and arrest such person in any county, and carry him to the county, in which the act complained of was committed, that proceeding may there be had according to law.

SECT. 55. Whenever any sheriff, deputy sheriff, coroner or constable, shall have arrested any person, by virtue of any lawful precept, for the purpose of committing him to the prison of his county, it shall be lawful for him to convey such person by the most convenient and suitable road or route, though the same may pass through a part of one or more counties, other than that, in which the prison is situated.

Same subject.  
1832, 44.

SECT. 56. No sheriff shall receive from any of his deputies any portion of the fees, for levying and collecting executions issued by a justice of the peace, wherein the debt or damage does not exceed twenty dollars, nor more than at the rate of twelve per cent. on the amount of fees for travel and service of precepts.

Of fees receivable by sheriffs, of their deputies.  
1829, 445, § 2.  
7 Mass. 33.

SECT. 57. Each deputy sheriff shall keep a true account, with the items thereof, of all fees for travel and service, and other emoluments of office, which have accrued or may be due to him, by virtue of the same, and he shall, within twenty days next after the first day of December annually, return under oath to the sheriff, a true copy of such account, up to the time of said return.

Deputies to make annual returns of their emoluments of office to the sheriff.  
1829, 445, § 3.

SECT. 58. Each sheriff shall, within ten days after the twentieth day of December annually, from the accounts returned to him by his deputies, as required in the preceding section, state a true account of the amount of the fees for travel, services, and other emoluments of office, specifying the different classes of items, which have accrued, or shall accrue from his deputies, and also of the amount of said fees and other emoluments specified as aforesaid, which have accrued, or shall be due to him in his office; within one year next before the making up of the same, and including the whole of the accounts of the deputies, after the said account of the sheriff was so made up, in the year preceding, and such sheriff shall, within said ten days, make a true return, under oath, of said account, to the treasurer of the county, of which he is sheriff, after deducting from the sum total, the sum limited in the following section, for the sheriff in each county, and shall pay over the residue of said sum total to the treasurer of his county, for the use thereof.

Of the sheriff's annual return, and settlement with the county treasurer.  
1829, 445, § 4.

SECT. 59. The sheriffs for the counties of York, Cumberland, Lincoln, Penobscot and Kennebec, shall be limited to seven hundred dollars. The sheriffs of Oxford and Somerset, to five hundred dollars each. The sheriffs of Hancock, Washington and Waldo, to four hundred dollars each. The sheriff of Piscataquis to three hundred and fifty dollars, the sheriff of Franklin to three hundred dollars, and the sheriff of Aroostook, to one hundred and twenty five dollars.

What sums may be retained by sheriffs in their respective counties.  
1829, 445, § 5.

SECT. 60. Every coroner, within the county, for which he is appointed, shall serve and return all writs and precepts, when the sheriff of the same county or any of his deputies shall be a party to the same, unless served by a constable, including those precepts, in cases where a town, plantation, parish, religious society, or

Of coroners' powers to serve precepts.  
1821, 93, § 1.  
1 Greenl. 361.  
4 Pick. 405.  
17 Pick. 166.  
21 Pick. 535.



**CHAP. 104.** school district is a party, or interested, though such coroner may, at the time, be a member of the corporation interested.

Same subject.  
1821, 93, § 1.

**SECT. 61.** When the office of sheriff in any county may be vacant, any coroner of such county shall have the like power to execute and return all writs and precepts, which are by law appointed to be served and returned by the sheriff or his deputies, until another sheriff shall be appointed and legally qualified.

Jailer to reside  
in the house  
provided for  
him, as such,  
if good and suffi-  
cient.  
1824, 277.

**SECT. 62.** Every keeper of a county jail shall reside constantly, with his family, if he have any, within the house provided for such keeper, where good and sufficient buildings are provided for that purpose, in the opinion of the county commissioners of the county, where the buildings are located; and, in case of his neglect so to do, he shall forfeit and pay a sum, not exceeding three hundred dollars, to be recovered by indictment to the use of the county.

## TITLE NINTH.

Of courts of probate, and the settlement of the estates  
of persons deceased.

- CHAPTER 105. Of the court of probate.
106. Of granting probate and administration, and the general obligations and powers of executors and administrators.
  107. Of public administrators, special administrators, executors in their own wrong, and administrators of persons deceased out of the state, and proceedings of surviving partners.
  108. Of the modes of distributing real and personal estate, and lands held in mortgage or taken on execution.
  109. Of insolvent estates.
  110. Of guardians.
  111. Of testamentary trustees.
  112. Of sales of real estate by executors, administrators, guardians and others, under special license of court.
  113. General provisions respecting probate bonds, and remedies on the same.

## CHAPTER 105.

## OF THE COURT OF PROBATE.

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| <p>SECT. 1. Present judges to remain in office.</p> <p>2. Vacancies to be supplied.</p> <p>3, 4. Jurisdiction of the court.</p> <p>5. Judge may issue processes, and to have a seal.</p> <p>6. Officers to obey his precepts.</p> <p>7. Power to punish for contempts.</p> <p>8. Days and places for holding courts to be fixed, and public notice thereof given.</p> <p>9. Appointment of register of probate.</p> <p>10. His general duties.</p> <p>11. His bond and the condition thereof.</p> <p>12. Of its forfeiture, and the effect.</p> <p>13. Register pro tem.</p> <p>14. His oath and bonds.</p> <p>15. Records to be examined.</p> <p>16. Appropriation of penalty of the register's bond.</p> <p>17. Further liability of the register.</p> <p>18, 19. When judge is interested, jurisdiction transferred to another county.</p> <p>20. Judge not to be attorney, nor counselor in matters incompatible.</p> <p>21. Register also prohibited.</p> <p>22. Assumed jurisdiction, in certain cases, voidable only on appeal.</p> | <p>SECT. 23. By whom probate oaths to be administered.</p> <p>24. Supreme court of probate.</p> <p>25. Right of appeal.</p> <p>26, 27. How to be exercised.</p> <p>28. When appeal is not entered, &amp;c. remedy of the appellee.</p> <p>29. When the aggrieved party is out of the United States.</p> <p>30. Of accidental omissions to claim or prosecute appeals.</p> <p>31. Notice to adverse party. Limitation.</p> <p>32. After bond given, further proceedings to cease.</p> <p>33. Proceedings in the supreme court of probate.</p> <p>34. Questions of fact may be tried by a jury.</p> <p>35. Of the recovery of costs.</p> <p>36. Approval of bonds by the judge, to be certified thereon.</p> <p>37. Of probate districts, parts of counties.</p> <p>38. When oaths may be administered, under special commissions.</p> <p>39. Cases, in which no probate, nor administration shall be granted.</p> <p>40. How the deceased's property shall vest in such cases.</p> |
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**CHAP. 105.**

Present judges to remain in office.

Vacancies to be supplied. 1821, 51, § 1.

Jurisdiction of the court.

1821, 51, § 1.  
1837, 292, § 3.  
9 Mass. 543.  
5 Pick. 65, 370, 519.

Same subject. 1821, 51, § 1.  
5 Pick. 370, 519.

Judge may issue processes, and to have a seal.

1821, 51, § 1.  
Officers to obey his precepts. 1821, 51, § 1.

Power to punish for contempts.

1821, 51, § 1, 75.

Days and places for holding courts to be fixed, and public notice thereof given.

1821, 51, § 5.

Appointment of register of probate.

1821, 51, § 3.

His general duties.

1821, 51, § 3.

**SECTION 1.** All judges of probate, now in office, shall continue to hold their offices, according to the tenor of their commissions where not inconsistent with the constitution.

**SECT. 2.** Whenever a vacancy in the office shall happen in any county, there shall be appointed, pursuant to the constitution of the state, some able and learned person, to be judge of probate for such county.

**SECT. 3.** The judge of probate for each county shall have power to take the probate of wills, and grant letters testamentary or administration, on the estates of all persons deceased, who were at the time of their decease, inhabitants of, or resident in the said county, and of all who shall die without the state, leaving an estate to be administered within such county, or whose estate may afterwards be found in said county; and also to appoint guardians to minors and others, in the cases prescribed by law. The said judge may also, on application, grant administration on the estate of any person, who shall, by due course of law, be under sentence of imprisonment for life in the state prison, either by commutation of a previous sentence, or otherwise.

**SECT. 4.** He shall have jurisdiction of all matters, relating to the settlement of such estates, and to such persons, under guardianship, and to whatever else, by the provisions of law may come under his cognizance and jurisdiction; and, when a case shall originate within the jurisdiction of the probate court, in two or more counties, the court, which shall first take cognizance thereof by the commencement of proceedings, shall retain the same throughout, exclusively.

**SECT. 5.** He shall have authority to issue whatever process may be necessary for the discharge of his official duties, and he shall have an official seal.

**SECT. 6.** Sheriffs and their deputies, coroners and constables shall serve and execute all legal warrants and processes, by him directed to them.

**SECT. 7.** Contempt of his authority, in any cause or hearing before him, may be punished, in like manner as such contempt may be punished in the district court. Any person, summoned to appear as a witness, before him, and who shall refuse to appear and give evidence, shall be liable to the like penalty or damage, as for refusing to appear and give evidence before any district court.

**SECT. 8.** The judges of probate, in their respective counties shall have certain fixed days and places for holding their courts and making and publishing their orders and decrees, where no express provision is made by standing laws; and such days shall be made known, by public notifications thereof in the several counties.

**SECT. 9.** Registers of probate shall continue to hold their offices according to the tenor of their commissions; and, as vacancies occur, there shall be appointed, in the manner provided by the constitution, a suitable person in each county, to be register of probate therein, to hold the office for the term prescribed by law; and who shall be duly sworn.

**SECT. 10.** The register shall have the care and custody of all files, papers and books, belonging to the probate office; and shall

duly record all wills, proved in said office, letters of administration, or guardianship, granted, accounts allowed, and all orders and decrees of the judge, and such other matters, as the judge may direct. CHAP. 105.

SECT. 11. Every register, before he enters upon the duties of his office, shall give bond to the treasurer of the county, to which the office pertains, in a sum, not less than one hundred, nor more than one thousand dollars, with one or more sufficient sureties, at the discretion of the judge of probate, who shall certify his approval thereon; and the bond shall be conditioned for the keeping up, seasonably and in good order, the records of the same court, and for making and keeping convenient and correct alphabets of the records in the custody of said register, and for the faithful discharge of all the other duties of the office.

His bond, and the condition thereof. 1821, 108, § 1.

SECT. 12. If such register shall incur a forfeiture of his said bond, he shall thenceforth be disqualified from holding said office, or being reappointed; and, if he shall neglect to complete his records, for more than six months at any one time, sickness or any extraordinary casualty excepted, such neglect shall be adjudged a forfeiture of his said bond.

Of its forfeiture, and the effect. 1821, 108, § 2.

SECT. 13. In case of the death or absence of the register, the judge of probate shall appoint a suitable person to officiate as register, until the standing register shall be able to perform his duty, or until another shall be appointed by the governor and council.

Register pro tem. 1821, 51, § 3.

SECT. 14. Such temporary register shall be duly sworn, and, if the judge of probate shall require it, shall give bonds, as in case of a standing register.

His oath and bonds.

SECT. 15. Every judge of probate shall constantly inspect the conduct of the register, whether permanent or temporary, with respect to his records, and the duties of his office; and give information, in writing, of any breach of the bond of such register to the county treasurer, having the same in keeping; whose duty it shall be to put the same in suit, on receipt of such information.

Records to be examined. 1826, 343, § 6.

SECT. 16. The money, recovered on such bond, shall, in the first instance, be applied for the expenses of duly completing the records of such register, under the direction of the judge, in whose office such deficiency shall happen, and the overplus, if any, shall enure to the use of the county.

Appropriation of penalty of the register's bond. 1826, 343, § 6.

SECT. 17. If the whole penalty of such bond be not sufficient to defray the expenses of completing such records, the treasurer may recover the amount of such deficiency of the register, in a special action on the case.

Further liability of the register.

SECT. 18. Whenever any judge of probate shall be interested, as heir, legatee, creditor or debtor, or within the degree of kindred, by means of which, by law, he might, by any possibility, be heir to any part of the estate of any person deceased, such estate shall be settled in the probate court of the most ancient adjoining county; provided, that the amount of the interest of such judge shall not be less than one hundred dollars in such estate. If his interest commence at any time, after he shall regularly have assumed jurisdiction of such estate, further proceedings therein shall be transferred to the probate court, held in the most ancient adjoining county.

When judge is interested, jurisdiction transferred to another county. 1821, 51, § 2. 1822, 198. 5 Pick. 483. 21 Pick. 101. 22 Pick. 507.

SECT. 19. The will of any such deceased person may be there

Same subject. 1821, 51, § 2.

**CHAP. 105.** proved, or administration granted, as the case may require, and all subsequent proceedings be had thereon, in like manner, as if the deceased had died in that county.

Judge not to be attorney nor counselor, in matters incompatible. 1821, 51, § 4.

**SECT. 20.** No judge of probate shall have a voice in judging and determining, nor be attorney or counselor, in or out of court, in any civil action or matter whatever, which may depend on, or relate to any sentence or decree, made by him in his office; nor be attorney or counselor in any civil action, for or against any executor, administrator, or trustee under any last will and testament, or guardian, as such, within his county.

Register also prohibited. 1821, 51, § 4.

**SECT. 21.** No register of probate shall be attorney or counselor, in or out of court, in any suit or matter, whatever, pending in the court of which he is register, nor in any appeal therefrom; nor shall he be executor, administrator, trustee, guardian, commissioner of insolvency, appraiser or divider, of or upon any estate, or in any case, that is within the jurisdiction of the court, of which he is register, nor be in any manner interested in the fees or emolument, arising from any of the said offices.

Assumed jurisdiction, in certain cases, voidable only on appeal.

**SECT. 22.** The jurisdiction assumed in any case by a judge of probate, except in cases of fraud, so far as it depends on the place of residence of any person, or the locality or amount of the property to be administered upon, shall not be contested in any suit or proceeding whatever, except on an appeal from the probate court in the original case, or when the want of jurisdiction appears on the same record.

By whom probate oaths to be administered. 1833, 62, § 2.

**SECT. 23.** All oaths, required to be taken by executors, administrators, trustees or guardians, excepting to the truth of inventories or accounts by them rendered, and all oaths, required of commissioners of insolvency, appraisers and dividers of estates, or of any other persons, in relation to any proceeding in the probate court, or to perpetuate the evidence of the publication of any order of notice, or of any notice of the time and place of sale of real estate by executors, administrators, guardians, or others, by license of a judicial court or court of probate, may, at any convenient time and place, be administered by the judge of probate, or by any justice of the peace, and a certificate thereof, when taken out of court, shall be returned into the registry of probate, and there filed and recorded.

Supreme court of probate. 1821, 51, § 6.

**SECT. 24.** The supreme judicial court shall be the supreme court of probate, and shall have appellate jurisdiction, in all matters determinable by the judges of probate in their respective counties.

Right of appeal. 1821, 51, § 64. 3 Pick. 443. 16 Pick. 264. 18 Pick. 1. 22 Pick. 507.

**SECT. 25.** Any person, aggrieved by any order, sentence, decree or denial of a judge of probate may appeal therefrom to said supreme court of probate, to be held within and for the same county, provided the appeal be claimed, before the expiration thirty days from the date of the proceeding appealed from.

How to be exercised. 1821, 51, § 64. 1 Mass. 543. 4 Pick. 465.

**SECT. 26.** Within ten days after claiming his appeal, the appellant shall make his bond to the adverse party, for such sum with such sureties, as the judge shall approve, conditioned for prosecution of his appeal with effect, at the next term of the supreme court of probate, where the same may be entered, and to pay.

intervening costs and damages, and such costs as the said supreme court shall tax against him; and shall file said bond in the probate office for the use of the adverse party; provided, that in case of any controversy between a supposed insane person or other person under guardianship, with his guardian, the supreme court of probate may, at their discretion, sustain an appeal on the part of the ward, although no bond may have been executed, or filed, as aforesaid.

SECT. 27. Such appeal shall be cognizable at the next term of the supreme court, which shall be holden after the expiration of thirty four days after such appeal shall be made: and the appellant shall file the reasons of appeal with the register of the court appealed from, within ten days after the bond is filed; and shall serve all the other parties, who have appeared before the judge of probate, in the case, with a copy of such reasons, attested by such register, fourteen days, at least, before the sitting of the court, to which the appeal is made.

Same subject.  
1821, 51, § 64.  
2 Mass. 150.  
4 Pick. 167.

SECT. 28. If the appellant in any case shall fail to enter and prosecute his appeal, the supreme court may, upon the complaint of any person interested in the case, affirm the former sentence, assess reasonable costs for the complainant, and take such further order thereon, as law and justice shall require.

When appeal is not entered, &c. remedy of the appellee.  
1821, 51, § 64.

SECT. 29. Any person beyond sea, or out of the United States, having no sufficient attorney within the state, at the time of any such proceeding, for which he might claim an appeal, shall have thirty days, after his return or constitution of such attorney, to claim and prosecute his appeal, as aforesaid.

When the aggrieved party is out of the United States.  
1821, 51, § 64.

SECT. 30. If any person, aggrieved by any act of the judge of probate, shall, from any accident, mistake, defect of notice, or otherwise, without default on his part, have omitted to claim or to prosecute his appeal according to the foregoing provisions, the supreme court, if it shall appear to them, that justice requires a revision of the case, may, upon the petition of the party aggrieved, and upon such terms as they shall think reasonable, allow an appeal to be entered and prosecuted with the same effect, as if it had been done seasonably.

Of accidental omissions to claim, or prosecute appeals.  
1821, 51, § 65.

SECT. 31. No such appeal shall be allowed, without due notice to the party adversely interested, nor unless the petition therefor be filed with the clerk of the supreme court of probate, within one year after the decision, from which the appeal is sought, to be heard, at the term next succeeding the filing thereof.

Notice to adverse party. Limitation.  
1821, 51, § 65.

SECT. 32. After an appeal is claimed, the bond filed, and the notice thereof given at the probate office, with the reasons of the appeal, all further proceedings, in pursuance of the order, sentence, decree or denial appealed from, shall cease, until the determination of the supreme court of probate shall be had thereon.

After bond given, further proceedings to cease.  
1821, 51, § 66.

SECT. 33. The supreme court of probate may reverse or affirm, in whole or in part, the sentence or act appealed from, and may pass such decree thereon as the judge of probate ought to have passed; and may remit the case to the probate court for further proceedings, or may take any order therein, as law and justice shall require.

Proceedings in the supreme court of probate.

SECT. 34. If, upon the hearing of an appeal in the supreme

Questions of

**CHAP. 105.** court, any question of fact shall occur, that is proper for jury, the court may cause it to be so tried, upon an is formed for the purpose, under the direction of the court.

fact may be tried by a jury. 1821, 51, § 64.  
Of the recovery of costs. 1821, 51, § 67.

**SECT. 35.** In all cases that are contested, either at court of original, or appellate jurisdiction, the said court tively, may, at their discretion, award costs to either par paid by the other, or to either, or both parties, to be paid estate, which is the subject of the controversy, as justice a shall require; and may issue executions for the same, in ner as is practised in the courts of common law.

Approval of bonds by the judge, to be certified thereon. 1821, 51, § 9. 16 Pick. 202.

**SECT. 36.** No bond, required by law to be given to of probate, or to be filed in the probate office, shall be sufficient, unless it shall have been examined and approve judge, and his approval thereof, under his official signatur thereon.

Probate districts, parts of counties. 1835, 159, § 1, 2.

**SECT. 37.** Where local districts, parts of a county hereafter designated by law, for the purpose of having a register of probate, for their separate accommodation, suc shall be considered counties for the purposes of this chapt other chapters where applicable; and appeals from the probate thereof shall be cog izable by the justices of the court, in the county, where such district is situate.

When oaths may be administered, under special commissions. 1821, 51, § 57.

**SECT. 38.** If any person, required to make oath to a tory or any account, which is to be settled by the judge c shall be unable to attend, by reason of infirmity or oth shall reside more than thirty miles from the place, where of probate is holden, it shall be lawful for said judge, mission issued for the purpose, to authorize any dis magistrate to administer such oath; who shall return a thereof to the judge, together with such commission and or account annexed, and the vouchers to prove the same.

Cases, in which no probate, nor administration, shall be granted. 1821, 51, § 20. 2 Mass. 120. 1 Pick. 114. 2 Pick. 361.

**SECT. 39.** No probate of any last will, nor adminis the estate of any person deceased, shall be originally gra the expiration of twenty years from his decease; nor administration be granted at any time, unless it satisfactor to the judge, that there is personal estate of the deceased, t to at least twenty dollars, or that the debts due from him to that sum; and, in the latter case, that he left that a value, of real estate.

How the deceased's property shall vest in such cases.

**SECT. 40.** In the cases, where no administration is gi the reasons, described in the preceding section, the perso left by any person deceased, shall become the proper widow, if any; otherwise, of the next of kin, who may ate the same, without being chargeable, as executors, in own wrong.



## CHAPTER 106.

## CHAP. 106.

## OF GRANTING PROBATE AND ADMINISTRATION, AND THE GENERAL OBLIGATIONS AND POWERS OF EXECUTORS AND ADMINISTRATORS.

- SECT. 1, 2.** To whom administration shall, or may be granted.
- 3.** Of the administrator's bond.
- 4.** Duty of persons, having wills in custody, before probate.
- 5.** When wills may be proved, by depositions.
- 6.** When by one or two of the subscribing witnesses.
- 7.** Of letters testamentary.
- 8.** Of the executor's bond.
- 9.** The condition, if executor be residuary legatee.
- 10.** Co-executors not to act as such, unless they give bond.
- 11.** Provisions for administration, when executor's bond is not given.
- 12.** Administration during executor's minority.
- 13.** Administrators with the will annexed to give bonds, as executors.
- 14.** Foreign wills may be allowed and recorded, in this state.
- 15, 16, 17.** Proceedings in probate court and the effect thereof.
- 18.** Nuncupative wills.
- 19.** Notice of appointment by executors, &c.
- 20.** Notice on estates of persons deceased, out of the state.
- 21.** Notice to be proved by affidavit, filed and recorded.
- 22.** Inventory to be returned, within three months.
- 23, 24.** Appraisers, and their proceedings.
- SECT. 25.** Additional inventories may be required.
- 26.** What may be omitted in the inventory.
- 27.** When the judge may require new, or additional bonds.
- 28.** When a sale of the personal estate may be ordered.
- 29.** Of executor's or administrator's election to hold the personal estate, as appraised.
- 30, 31, 32.** Proceedings in cases of suspected embezzlement.
- 33.** When debts, due the deceased, may be compounded.
- 34.** Removal from office of nonresident and incompetent executors, &c.
- 35.** Administration of executrix, &c. to cease on her marriage.
- 36.** Executor's authority, not transmitted to his executor.
- 37.** Rights of co-executors, &c. at law, in certain cases.
- 38.** Chancery remedies.
- 39.** Of waste, by neglecting to pay debts.
- 40.** Of the settlement of administration accounts.
- 41.** With what property executor, &c. shall be chargeable.
- 42.** Income of real estate, when to be accounted for.
- 43.** Allowance of claims in favor of executors, &c.
- 44.** What previous acts are valid, on revocation of powers of executors, &c.

**SECTION 1.** Upon the decease of any person intestate, the judge of probate, having jurisdiction for the purpose, under the provisions of the third section of chapter, one hundred and five, shall grant administration of such intestate's goods or estate, to the widow, husband, next of kin, or husband of the daughter of the deceased, or to two or more of them, as he shall think fit, if the applicant be over the age of twenty one years, and, in other respects, in his opinion, suitably qualified for the trust; except as provided in the next section.

To whom administration shall, or may be granted.  
1821, 51, § 7.  
4 Mass. 348.  
4 Pick. 33.

**SECT. 2.** After thirty days from the decease of such intestate, if such husband, widow or next of kin, being resident in the county, and cited before the judge for the purpose, shall neglect or refuse to take out letters of administration, or if, in the opinion of the judge, they shall be unsuitable for the trust, he may commit administration on such estate to one or more of the principal creditors, or to such other person or persons, as he shall deem suitable.

Same subject.  
1821, 51, § 7.  
1828, 401, § 2.  
18 Pick. 24.



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Of the administrator's bond.  
1821, 51, § 7.  
11 Mass. 190.  
2 Pick. 24.  
9 Pick. 395.

3 Pick. 365.

1 Pick. 230.  
4 Pick. 50.  
8 Pick. 526.

1835, 191, § 4.

Duty of persons, having wills in custody, before probate.  
1821, 51, § 11.  
4 Mass. 137.  
5 Greenl. 490.  
6 Greenl. 274.  
4 Pick. 33.

When wills may be proved, by depositions.  
1821, 51, § 12.  
5 Mass. 219.

When by only one or two of the subscribing witnesses.  
1821, 51, § 13.

SECT. 3. Every administrator shall, before entering on the execution of his trust, give bond with good and sufficient sureties, resident within this state, in such sum, as the judge shall order, payable to the said judge or his successors, with condition in substance as follows :

*First.* To make and return into the probate court, within three months, a true inventory of all the real estate, and all the goods, chattels, rights and credits of the deceased, which have or shall come to his possession or knowledge ;

*Secondly.* To administer, according to law, all the goods, chattels, rights and credits of the deceased ;

*Thirdly.* To render, upon oath, a true account of his administration, within one year, and at any other times, when required by the judge of probate ;

*Fourthly.* To pay and deliver any balance, or any goods and chattels, rights and credits, remaining in his hands, upon the settlement of his accounts, to such persons, as the judge of probate shall direct ;

*Fifthly.* To deliver the letters of administration into the probate court, in case any will of the deceased shall be thereafter duly proved and allowed ;

*Sixthly.* To account, in case the estate should be represented insolvent, for three times the amount of any injury done to the real estate of the deceased by him, or with his consent, between the time of the representation of insolvency, and the sale of such real estate for the payment of debts, by waste or trespass committed upon any building thereon, or any trees standing and growing thereon, except as may be necessary for repairs or fuel for the family of the deceased, or by waste or trespass of any other kind ; and also for such damages, as he may recover of any heir or devisee of the said estate or other person, for the like waste or trespass, committed on any such real estate.

SECT. 4. Every person, having the custody of any will, shall, within thirty days after notice of the death of the testator, deliver the same into the probate court, which has jurisdiction of the same, or to the executors named in the will ; and, if he shall, without any reasonable cause, neglect so to do, after being duly cited for that purpose by the judge of probate, he may be committed to the jail of the county, by warrant of the said judge, there to be kept in close custody, until he shall deliver the will, as above directed ; and he shall be further liable to the action of any party aggrieved, for the damage, which may be sustained by such neglect.

SECT. 5. When a will shall be offered for probate to the judge and the witnesses, or any of them, live out of the state, or more than thirty miles distant, or by reason of age or indisposition of body are unable to attend court, the deposition of such witnesses, taken in writing, under oath, before any magistrate, authorized by commission from such judge, shall be competent evidence in the absence of such witness.

SECT. 6. When it shall clearly appear to the judge, either with the consent of the heirs at law, in writing, or otherwise, that there is no objection to the probate of any will, the said judge may decree probate thereof, upon the testimony of one or more of

three subscribing witnesses, required by law, he or they substantiating all the requisite facts. CHAP. 106.

SECT. 7. When any will shall have been duly proved and allowed, the judge of probate may issue letters testamentary thereon to the executor, if any named therein, if he is legally competent, and if he shall accept the trust, and shall give bond to discharge the same. Of letters testamentary.

SECT. 8. Every executor, whether resident within the state or not, before entering upon the execution of his trust, shall give bond with sufficient sureties, resident in this state, in such sum, as the judge of probate shall order, payable to the judge or his successor, with condition, in substance, as follows : Of the executor's bond. 1821, 51, § 15.

*First.* To make and return to the probate court, within three months, a true inventory of all the real estate, and all the goods, chattels, rights and credits of the testator, which are by law to be administered, and which shall have come to his possession or knowledge ;

*Secondly.* To administer, according to law, and to the will of the testator, all his goods, chattels, rights and credits ; 9 Pick. 395.

*Thirdly.* To render, upon oath, a just and true account of his administration, within one year, and at any other times, when required by the judge of probate ;

*Fourthly.* To account, in case the estate should be represented insolvent, for three times the amount of any injury done to the real estate of the deceased by him, or with his consent, between the time of the representation of insolvency, and the sale of such real estate for the payment of debts, by waste or trespass, committed on any building thereon, or on any trees standing and growing thereon, except as may be necessary for repairs, or fuel for the family of the deceased, or by waste or trespass of any other kind, and also for such damages as he may recover from any heir or devisee of the estate, or other person, for the like waste or trespass, committed on any such real estate. 1835, 191, § 4.

SECT. 9. If such executor be a residuary legatee, the condition of his bond, instead of that required in the preceding section, shall be, to return an inventory, as required in the first clause of the preceding condition, and to pay all the debts and legacies of the testator, unless the estate of the testator, from some unexpected event, should prove insufficient for the payment of the same. Condition, if executor be residuary legatee. 1830, 470, § 7. 13 Mass. 365. 5 Pick. 357.

SECT. 10. When there are two or more persons named co-executors in any will, none shall have authority to act as such, or intermeddle, except those who give bonds as aforesaid. Co-executors not to act as such, unless they give bond. 1821, 51, § 15.

SECT. 11. If any person, who is appointed an executor, shall refuse to accept the trust, on being duly cited for the purpose, or if he shall neglect, for twenty days after probate of the will, to give bond as before prescribed, the judge may grant letters testamentary to the other executors, if there be any capable and willing to accept the trust ; and, if there is no such other executor, the judge may commit administration of the estate, with the will annexed, to such person as he would be authorized to appoint, if the deceased had died intestate. Provisions for administration, when executor's bond is not given. 1821, 51, § 15. 4 Pick. 33.

SECT. 12. When an executor is under the age of twenty one year, at the time of the probate of the will, administration may be Administration during executor's minority. 1821, 51, § 15.

**CHAP. 106.** granted, with the will annexed, during the minority of such executor, unless there be another executor, who shall accept the trust; in which case, the estate shall be administered by such other executor, until the minor shall arrive at full age, when he may be admitted as joint executor, with the former, upon giving bond, as before provided.

Administrators with the will annexed, to give bonds, as executors.

**SECT. 13.** Every person, who is appointed administrator with the will annexed, shall, before entering upon the execution of his trust, give bond to the judge of probate, in like manner, and with like condition, as is required of an executor.

Foreign wills may be allowed and recorded, in this state. 1821, 51, § 14. 4 Greenl. 134.

**SECT. 14.** Any will, that shall have been proved and allowed in any other of the United States, or in any foreign country, according to the laws of such state or country, may be allowed and recorded in this state, in the manner and for the purposes, mentioned in the following sections.

Proceedings in probate court, and the effect thereof. 1821, 51, § 14. 4 Greenl. 134.

**SECT. 15.** A copy of the will and the probate thereof, duly authenticated, shall be produced by the executor, or by any person interested therein, to the judge of [the] probate in any county, in which there is any estate, real or personal, on which the will may operate; whereupon the judge shall assign a time and place of hearing the case, and shall cause notice thereof, to all persons interested, to be given in some public newspaper, three weeks successively; the first publication to be thirty days at least before the time so assigned.

Same subject. 1821, 51, § 14. 3 Fairf. 127.

**SECT. 16.** If, on hearing the case, it shall appear to the judge, that the instrument ought to be allowed in this state, as the last will and testament of the deceased, he shall order the copy to be filed and recorded; and the will shall then have the same force and effect, as if it had been originally proved and allowed in the same court in the usual manner; provided however, that nothing herein contained shall be construed to make valid any will, that is not executed, attested and subscribed in the manner prescribed by the laws of this state, nor to give any operation and effect to the will of an alien, different from what it would have had, if originally proved and allowed within this state.

Same subject. 8 Mass. 506. 13 Pick. 8.

**SECT. 17.** After allowing and recording any will, pursuant to the three preceding sections, the judge of probate may grant letters testamentary thereon, or letters of administration with the will annexed, and may proceed in the settlement of the estate, that may be found in this state, in the manner provided in chapter, one hundred and seven, with respect to the estates of persons, who were inhabitants of any other state or country; and the letters testamentary, or of administration, thus granted, shall extend to all the estate of the deceased within this state, and shall exclude the jurisdiction of the probate court in every other county.

Nuncupative wills. 1821, 38, § 6.

**SECT. 18.** No letters testamentary, or probate of any nuncupative will shall pass the seal of any court of probate, until fourteen days after the decease of the testator; nor shall such will be approved and allowed at any time, unless due notice shall have been given to all persons interested, and specifying, that such will, to be proved, is a nuncupative will.

Notice of ap-

**SECT. 19.** Every executor or administrator shall, within three

months after giving bond for the discharge of his trust, cause notice of his appointment to be posted up in two or more public places to be specified by the judge, in the town where the deceased last dwelt, if in this state; and such further notice, as the judge shall, in writing, direct.

**SECT. 20.** If the deceased was neither an inhabitant, nor resident in this state, at the time of his decease, such notice shall be given by publishing in such newspaper, or in such other mode, as the judge, under the circumstances of the estate, shall direct.

**SECT. 21.** An affidavit of the executor or administrator, or of the person, employed by him to give such notice, being made before the judge of probate, or before any justice of the peace, and filed and recorded, together with a copy of the notice, in the probate court, within one year after giving bond as aforesaid, shall be admitted as evidence of the time, place and manner, in which the notice was given.

**SECT. 22.** Every executor and administrator shall, within three months after his appointment, make and return, upon oath, into the probate court, a true inventory of the real estate, and all the goods and chattels, rights and credits of the deceased, which are by law to be administered, and which shall come to his possession or knowledge.

**SECT. 23.** The real estate, and goods and chattels, comprised in the inventory, shall be appraised by three suitable disinterested persons, appointed by the judge of probate, and duly sworn; and, when any part of such estate is situated or found in any other county, than where probate or administration is granted, the judge, at his discretion, may appoint three other appraisers for every such county, to return an inventory thereof, who shall also be sworn.

**SECT. 24.** Such of the credits of the deceased, and rights to personal property not in possession, as the appraisers may judge to be, in whole or part, available, as assets, shall be enumerated in a schedule, part of said inventory, with the names of the debtors or parties obligated, and the respective sums supposed to be due thereon, and the nature of the rights aforesaid, whether absolute or conditional; and the appraisers shall state in one general sum, at the foot of such schedule, such amount as in their judgment may probably be realized from the same, exclusive of expenses and risk of settlement or collection.

**SECT. 25.** The judge of probate, at his discretion, may at any time afterward, whenever any estate or effects, rights or credits, shall come to the knowledge or possession of any executor or administrator, require of him an additional inventory; and appraisers in like manner shall be appointed and sworn; and return shall be made within such time, as the judge in his warrant shall direct.

**SECT. 26.** The following articles shall be omitted in making the inventory, and shall not be administered upon as assets, to wit:

*First.* All the articles of apparel or ornament of the widow, according to the degree and estate of the husband, and also the apparel and school books of minor children of the deceased;

*Secondly.* The wearing apparel of the deceased, not exceeding one hundred dollars in value, provided that, before the return of the

CHAP. 106.

pointment by executors, &c. 1821, 51, § 18. 8 Mass. 111. 12 Mass. 199.

Notice on estates of persons deceased, out of the state. 1821, 51, § 18.

Notice to be proved by affidavit, filed and recorded. 1821, 51, § 18.

Inventory to be returned, within three months. 1821, 51, § 7. 1 Mass. 35, 204.

Appraisers, and their proceedings. 1821, 51, § 7.

Same subject.

Additional inventories may be required. 1830, 470, § 3.

What may be omitted in the inventory.

**CHAP. 106.** inventory, such executor or administrator shall have distributed the same to the widow and minor children of the deceased, which he is authorized to do at his discretion, and shall return to the judge a certificate of such distribution, from the widow or next of kin, being of age, to such children ;

*Thirdly.* Such provisions and other articles, not exceeding fifty dollars in value, as may have necessarily been consumed in the family of the deceased, before the appraisal of such estate.

When the judge may require new, or additional bonds.

**SECT. 27.** If, after the return of any inventory, or in the progress of the settlement of the estate of any person deceased, the judge shall find, that the bonds, given by any executor or administrator, are too small in amount, or insecure for want of responsibility in the sureties, he may at his discretion, require additional or larger bonds, or other sureties ; and if said executor or administrator shall not furnish the same, his authority may be revoked, and some other person appointed in his place.

When a sale of the personal property may be ordered. 1821, 51, § 10.

**SECT. 28.** The judge of probate, whenever he may deem it necessary, for the speedy payment of the debts of the deceased, or for the benefit of all parties interested, that all or any of the goods and chattels, rights and credits, named in the inventory, the same not having been distributed, should be sold, may order, either a public or private sale of the same, and in such manner, as he shall direct ; and the executor or administrator shall account for the same, as sold : saving the legal rights of persons to whom specific legacies are bequeathed, and those of the executor or administrator, under the provisions of the succeeding section.

Of the executor's or administrator's election to hold the personal estate, as appraised. 1821, 51, § 10. 1830, 470, § 7.

**SECT. 29.** Every executor or administrator shall be held to account for all the goods and effects, named in the inventory, other than rights to personal property not in possession, and credits of the deceased, and such articles as may be the subject of specific legacies, at the rate at which the same shall be appraised, unless within three months after the return of the inventory, he shall, in writing, signify to the judge, his election to the contrary, or unless the judge, on the application of some party interested, shall have previously ordered a sale thereof ; provided that for special reasons, the judge may allow him the further term of six months to make such election.

Proceedings in cases of suspected embezzlement. 1821, 51, § 24. 4 Mass. 322. 7 Greenl. 467.

**SECT. 30.** Upon complaint made to the judge of probate, by any executor or administrator, or by any heir, legatee, creditor or other person interested in the estate of any person deceased, against any one suspected of having concealed, embezzled or conveyed away any of the money, goods or effects of the deceased, the judge may cite such suspected person to appear before him, and to be examined upon oath, upon the matter of such complaint.

Same subject. 1821, 51, § 23.

**SECT. 31.** Upon complaint of either of the said parties, interested in such estate, that any person, who may have been entrusted by any executor or administrator with any part of the estate of the testator or intestate, refuses to render a full account thereof to such executor or administrator, when required, the judge of probate may cite such person to appear before him, and to render a full account under oath, of any money, goods or chattels, bonds or accounts, or other papers, belonging to such estate, taken into his custody, and

of his doings under or in behalf of such executor or administrator. CHAP. 106.

SECT. 32. If any person duly cited, as provided in the two preceding sections, shall refuse to appear and submit to such examination, or to answer such interrogatories, as shall be lawfully propounded to him, the judge may commit him to the common jail of the county, there to remain until he submit to the order of the court, or be discharged by the complainant, or by order of the supreme judicial court. Same subject.  
1821, 51, § 24.

SECT. 33. Whenever any debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the judge of probate, may compound with such debtor, and give him a discharge on receiving a fair proportion of the same. When debts,  
due the deceased,  
&c., may be com-  
pounded.  
1821, 51, § 30.

SECT. 34. When an executor or administrator, residing out of this state, shall, after being duly cited by the judge of probate, neglect to render his accounts, and to settle the estate according to law; or when any executor or administrator shall become insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the judge of probate may remove him, and, if there be no other executor or administrator to discharge the trust, the judge may commit administration, with the will annexed, or otherwise, as the case may require, of the estate, not already administered, to such persons, as he shall think fit, in like manner, as if the one, so removed, were dead, and such administrator shall have the same authority, and be liable to the same obligations, as other administrators. Removal from  
office, of non  
resident and  
incompetent  
executors, &c.  
1821, 51, § 19.

SECT. 35. When an unmarried woman, who is executrix or administratrix, either alone, or jointly with another person, shall marry, her husband shall not exercise such trust in her right, but the marriage shall operate as an extinguishment of her authority; and the other executor or administrator, if there be any, may proceed in discharging the trust, as if she were dead. If there be no other administration with the will annexed, or otherwise, may be granted, as authorized in the case, provided for in the preceding section. Administration  
of executrix,  
&c. to cease on  
her marriage.  
1821, 51, § 19.  
14 Mass. 295.  
17 Mass. 341.

SECT. 36. The executor of an executor shall have no authority, such, to administer the estate of the first testator; but, on the death of the sole or surviving executor of any last will, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person, as the judge of probate shall think fit. Executor's au-  
thority, not  
transmitted to  
his executor.  
1821, 51, § 19.

SECT. 37. When there is more than one executor or administrator, and either of them shall be removed from office by the judge of probate, the others may proceed to discharge the trust reposed in them, in the same manner, as if the person so removed were dead; and they may bring actions of account against him, and recover, by any proper legal process, such effects and assets, as remain in his hands, unadministered. Like actions or process may be brought by one executor, or co-administrator, against another, to recover a proportional share of the estate, under their administration, when the latter retains an undue proportion thereof, or refuses either Rights of co-ex-  
ecutors, &c. at  
law, in certain  
cases.  
1821, 51, § 19.

**CHAP. 106.** to account to the other, or to pay the debts, legacies, or o charges on such estate, or where the aggrieved executor is a res ary legatee.

Chancery remedies.  
1837, 301, § 1.

**SECT. 38.** The supreme judicial court may hear and determ in equity, all disputes and controversies, between co-executors co-administrators, and between their respective legal representati in all cases where there is not a plain, adequate and complete r edy at law : and, in such case, the court shall have the same po and may proceed in like manner, as is provided in cases betw co-partners.

Of waste, by neglecting to pay debts.  
1821, 51, § 29.  
5 Pick. 96.

**SECT. 39.** When any executor or administrator shall neglec unreasonably delay to raise money out of the testator's or intest estate, or shall neglect to pay the same where due, and shall ther subject the estate under his care to be taken in execution, he s be deemed guilty of waste and unfaithful administration.

Of the settle- ment of admin- istration ac- counts.  
7 Pick. 14.  
8 Pick. 434.

**SECT. 40.** Every executor or administrator shall render accounts, agreeably to the condition of his bond ; and the judg probate may require him to account, whenever he may deen necessary, whether with or without a special application from parties interested ; but no such account shall be settled with reasonable notice to such parties. On the examination of s account, the accountant may be interrogated, under oath, in relat to the same, and such record of his answers made, as the ju may require.

With what property execu- tor, &c. shall be chargeable.  
4 Mass. 318.  
13 Mass. 177.  
4 Pick. 50.  
6 Pick. 422, 431.  
7 Pick. 14.

**SECT. 41.** Every executor and administrator shall be char able in his account with all goods, chattels, rights and credits of deceased, which shall come to his hands, which are by law to administered, whether included in the inventory or not ; also a all the proceeds of real estate, sold for the payment of debt legacies, and incidental expenses, and with all the interest, p and income, that shall in any way come to his hands, in his capacity, from any estate of the deceased.

Income of real estate, when to be accounted for.  
1821, 51, § 22.  
16 Mass. 230.

**SECT. 42.** If any part of the real estate shall have been u or occupied, by the executor or administrator, he shall account the income thereof, to the devisees or heirs in such manner as s be ordered by the judge of probate, with the assent of the acco ant, and such of the other parties as may be present at the setl ment of his account ; and, if the parties do not agree on the s to be allowed, it shall be determined by three disinterested pers to be appointed, for that purpose, by the judge of probate, wh award, being accepted by the judge, shall be final.

Allowance of claims in favor of executors, &c.  
1821, 51, § 21.

**SECT. 43.** No claim of any executor or administrator aga the estate of his testator or intestate, shall be allowed in his acco unless particularly stated in writing, and, if any such claim, being for charges of administration, shall be disputed by any per interested adversely in the allowance thereof, the determinati such dispute may be submitted to such referees, as the parties their agents or guardians, interested and present, may, in writ under their hands, agree upon ; and the judge of probate r receive, approve and allow, or, if necessary, recommit the repon such referees, made in writing, pursuant to the submission, s decree accordingly.

**SECT. 44.** When any letters of administration shall be revoked, or when any executor or administrator shall be removed, all previous sales, whether of real or personal estate, made in a legal manner by the executor or administrator, and with good faith on the part of the purchaser, and all other acts, in due course of administration, done by such executor or administrator, in good faith, shall remain valid and effectual; he being accountable in the same manner as if he had not been removed.

**CHAP. 106.**

What previous acts are valid, on revocation of powers of executors, &c.

## CHAPTER 107.

OF PUBLIC ADMINISTRATORS, SPECIAL ADMINISTRATORS, EXECUTORS IN THEIR OWN WRONG, ADMINISTRATORS ON ESTATES OF PERSONS DECEASED, OUT OF THE STATE, AND PROCEEDINGS OF SURVIVING PARTNERS.

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| <p><b>SECT. 1.</b> PUBLIC ADMINISTRATORS, to remain in office.</p> <p>2. Vacancies to be filled. Duty.</p> <p>3. When they shall render an account.</p> <p>4. Excess of money in their hands, to be deposited with the state treasurer.</p> <p>5. In case of neglect, bond to be put in suit by the state treasurer.</p> <p>6. After twenty years, such excess forfeited to the state.</p> <p>7, 8. When their administration shall be revoked.</p> <p>9. Form of their administration bond.</p> <p>10. Sale of real estate, as in general cases.</p> <p>11. Also after three years, for the benefit of all concerned.</p> <p>12. Proceedings in such cases.</p> <p>13. When SPECIAL ADMINISTRATORS may be appointed.</p> <p>14. Bond.</p> <p>15. Duties and compensation. Allowance to widow, or children under fourteen years of age, provisional.</p> | <p><b>SECT. 16.</b> When their powers shall cease.</p> <p>17. Not liable to suits of creditors of deceased. Limitation act suspended.</p> <p>18. Of EXECUTORS IN THEIR OWN WRONG.</p> <p>19. Their liability.</p> <p>20, 21. Estates of PERSONS DECEASED OUT OF THE STATE, how administered and settled.</p> <p>22, 23, 24, 25. How distributed, in cases of insolvency.</p> <p>26. Appraisal of PARTNERSHIP PROPERTY.</p> <p>27. To remain with surviving partner on his giving bond.</p> <p>28. Condition of such bond.</p> <p>29. Judge's authority. Remedies on the bond.</p> <p>30. If such partner neglect to give bond, duty of the executor, &amp;c.</p> <p>31. Further bonds required of executor, &amp;c.</p> <p>32. Duty of surviving partner, in such case.</p> <p>33. Compulsory process.</p> |
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**SECTION 1.** All public administrators, now in office, shall continue to hold the same, according to the tenor of their commissions.

**SECT. 2.** Whenever a vacancy shall occur in said office, in any county, the governor and council shall appoint some suitable and discreet person, as public administrator in such county, who shall be entitled, and whose duty it shall be, to take out letters of administration, and faithfully administer upon the estate of any person, who may die intestate in such county, not known to have left any heir or kindred in this state, who by law can inherit such estate.

**SECT. 3.** Such public administrator shall account to the judge

Public administrators, to remain in office.

Vacancies to be filled. 1828, 401, § 1.

Duty.

When they



**CHAP. 107.** of probate, like other administrators, as often, at least, as once a year, until he shall have closed his administration, and as much oftener as the judge shall require.

shall render an account.

1823, 401, § 1.  
1835, 153, § 4.

Excess of money in their hands, to be deposited with the state treasurer.

1823, 401, § 1.

**SECT. 4.** Whenever there shall be, in the hands of such public administrator, an amount of money more than may be necessary for the payment of the deceased's debts, and other purposes of administration, he shall be required, by the judge of probate, to deposit the same with the treasurer of the state for the time being, who shall receive the same; and the state shall be responsible for the principal thereof, for the benefit of those who may lawfully claim the same, and the governor and council, on application duly proved, may order the treasurer to pay it over.

In case of neglect, bond to be put in suit by the state treasurer.

1835, 153, § 4.

**SECT. 5.** In such case, the judge of probate shall give notice to the treasurer of the state, of such amount, and from what estate receivable; and, if the said administrator shall neglect, for the term of three months after the order of the judge therefor, to make such deposit, it shall be the duty of the treasurer to cause his probate bond to be put in suit, for the recovery of the same.

After twenty years, such excess forfeited to the state.

1835, 153, § 4.

**SECT. 6.** If the heirs, widow, or next of kin to any such intestate, or other lawful claimant, shall not demand the sums, so deposited for their benefit, within twenty years from the time of such deposit, the same shall be forfeited to the use of the state.

When the administration shall be revoked.

1835, 153, § 1.

**SECT. 7.** If, before the estate of such deceased shall have been fully settled by such public administrator, any last will and testament of the deceased shall be produced, and duly proved, or if any of the heirs or next of kin, or widow of the deceased, shall make application in writing to the judge of probate, having jurisdiction of the estate thus administered upon, and claim the right to administer on the same, or that some other suitable person should be appointed to that trust, it shall be the duty of the judge, to revoke the former administration, and grant letters testamentary, or a new administration, as the case may require.

Same subject.

1835, 153, § 1.

**SECT. 8.** The public administrator shall be thereupon required to surrender his letters of administration on said estate, to the judge of probate, and settle his account, and pay over to his successor, all sums of money remaining in his hands, and all the goods, chattels, rights and credits of said deceased, not administered upon.

Form of their administration bond.

1823, 401, § 1.  
1835, 153, § 1.

**SECT. 9.** Every public administrator, on taking out letters of administration on any estate, as provided in the second section of this chapter, shall give bonds to the judge of probate, with like condition as in cases of ordinary administration, and with the further condition, in substance, that he will comply with the provisions of the foregoing section.

Sale of real estate, as in general cases.

1835, 153, § 2.

**SECT. 10.** The judge of probate may grant license to the public administrator, to sell the real estate of any intestate, whose estate is under his administration, for the payment of debts and incidental charges, to the same extent, as he is authorized by law to grant to other administrators, in like cases.

Also after three years, for the benefit of all concerned.

1835, 153, § 3.

**SECT. 11.** The judge of probate may also grant license, in like manner, to any public administrator, to sell, either at public or private sale, all or any of the real estate of his intestate, after the expiration of three years from the granting of administration,

although not necessary for the payment of debts; provided, it be made to appear, that it would be for the interest of all concerned, that said real estate should be sold, and that no heir, nor other person directly interested in said estate, other than creditors, can be found in the United States.

SECT. 12. In such cases, the judge of probate shall observe all the provisions of law required in the sale of real estate by other administrators; and such administrator shall give like bonds, so far as applicable, and like notice, and take the like oath, and proceed in other respects in like manner, as is required of other administrators: and the net proceeds of such sale shall be deposited with the treasurer of the state, agreeably to the provisions of sections, four, five and six, of this chapter, and to the same uses.

Proceedings, in such cases, 1835, 153, § 3.

SECT. 13. When, by reason of a suit concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary, or of administration, the judge of probate may, in his discretion, appoint a special administrator, who shall nevertheless proceed in the execution of his duties, until it shall be otherwise ordered by the supreme court of probate.

When special administrators may be appointed. 22 Pick. 507.

SECT. 14. Every such administrator shall, before entering on the duties of his trust, give bond, with sufficient surety or sureties, in such sum as the judge of probate shall order, payable to the said judge, or his successor, with condition, that he will make and return into the probate court, within three months, a true inventory of all the goods, chattels, rights and credits of the deceased, which have or shall come to his possession, or knowledge; and that he will truly account, on oath, for all the goods, chattels, debts and effects of the deceased, that shall be received by him, as such special administrator, whenever required by the judge of probate; and will deliver the same to the person, who shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same.

Bond.

SECT. 15. Such special administrator shall collect all the goods, chattels and debts of the deceased, and preserve the same for the executor or administrator, who shall be thereafter appointed; and, for that purpose, may commence and maintain suits, as an administrator; and may also sell such perishable and other goods, as the judge of probate shall order to be sold, and shall pay to the widow of said testator, if any, and if there be none, to the guardian of the minor children under the age of fourteen years, such sum, as the judge of probate may order, to be paid, for her or their temporary assistance and support; having regard to the state and amount of the property, until the final decision on said will, and the issuing letters testamentary or the appointment of a permanent administrator; and such sum, so ordered and paid, shall be deducted from the share of said widow or children, on a final settlement, if said estate shall be solvent; but if insolvent, shall be taken into consideration by said judge, in the allowance which he shall make to said widow or children; and such special administrator shall be allowed such compensation for his services, as the judge of probate shall think reasonable, not exceeding the limits allowed to other administrators.

Duties and compensation. Allowance to widow, or children under fourteen years of age, provisional.

SECT. 16. Upon the granting of letters testamentary, or of

When their

**CHAP. 107.**

powers shall  
cease.

Not liable to  
suits of credi-  
tors of deceas-  
ed. Limita-  
tion act sus-  
pended.

Of executors in  
their own  
wrong.  
1821, 51, § 44.  
4 Mass. 654.  
15 Maine, 116.

Their liability.  
15 Mass. 322.

Estates of per-  
sons deceased  
out of the state,  
how adminis-  
tered and dis-  
tributed.  
3 Mass. 514.  
9 Mass. 337.  
11 Mass. 256.  
1 Pick. 80.  
3 Pick. 128.

Same subject.  
3 Mass. 514.  
9 Mass. 337.  
11 Mass. 256.

How distribut-  
ed, in cases of  
insolvency.  
3 Pick. 128.  
6 Pick. 481.  
8 Pick. 475.

Same subject.

administration, the power of the special administrator shall and he shall forthwith deliver to the executor or administrator the goods, chattels, money and effects of the deceased, in and the executor or administrator may be admitted to prosecute a suit, commenced by the special administrator, in like manner as an administrator, de bonis non, is authorized to prosecute a suit commenced by a former executor or administrator.

**SECT. 17.** Such special administrator shall not be liable in any action by any creditor of the deceased; and the time of limitation for all suits against the estate, shall begin to run, from the date of granting letters testamentary, or of administration, in the same manner, as if such special administration had been granted.

**SECT. 18.** If any person shall sell, or embezzle any goods or effects of a deceased person, liable to administration, and taking out letters testamentary or of administration thereon, without giving bond, as executor or administrator, he shall be liable in all actions of the creditors, and other persons aggrieved, as an executor in his own wrong.

**SECT. 19.** Every executor in his own wrong shall be liable for the full value of the effects of the deceased, taken by him, and for all damages, his acts, to the estate of the deceased; and he shall not be allowed to retain or deduct any part of the goods or effects, except funeral expenses or debts of the deceased, or other charges lawfully paid by him, as the rightful executor or administrator, if he have been compelled to pay.

**SECT. 20.** When administration shall be taken, in this state, of the estate of any person, who, at the time of his decease, was an inhabitant of any other state or country, his estate found in this state, for the payment of his debts, shall be disposed of according to the laws of this state, if he left any, duly executed, according to the laws of that state; and, if there should be no such will, his real estate shall be disposed of according to the laws of this state; and his personal estate shall be distributed, and disposed of, according to the laws of that country, of which he was an inhabitant.

**SECT. 21.** Upon the settlement of such an estate, and the payment of all debts, for which the same is liable, in this state, the residue of the personal estate, if any, may be distributed in the same manner as aforesaid, by the probate court, in which the estate is settled; or it may be transmitted to the executor or administrator, if there be any, in the state or country, where the decedent had his domicile, to be there disposed of according to the laws of that place; as the court, under the circumstances of the case, shall think best.

**SECT. 22.** If such deceased person died insolvent, and his estate is found in this state shall, as far as practicable, be so disposed of that all his creditors here, or elsewhere, may receive an equal dividend in proportion to their respective debts.

**SECT. 23.** To this end, his estate shall not be transmitted to the foreign executor or administrator, until all his creditors, citizens of this state, shall have received the just proportion of their debts.

would be due to them, if the whole estate of the deceased, where-  
 ever found, that is applicable to the payment of common creditors,  
 were divided among all the said creditors, in proportion to their  
 respective debts, without preferring any one species of debt to  
 another. CHAP. 107.

SECT. 24. In such a case, no creditor, not being a citizen of  
 this state, shall be paid out of the assets found here, until all those,  
 who are citizens, shall have received their just proportion, as pro-  
 vided in the preceding section. Same subject.

SECT. 25. If there be any residue, after such payment to the  
 citizens of this state, the same may be paid to any other creditors,  
 who shall duly have proved their debts here, in proportion to the  
 amount due to each of them, respectively; provided, that no one  
 shall receive more than would be due to him, if the whole estate  
 were divided ratably among all the creditors, as before provided;  
 and the balance, if any, may be transmitted to the foreign executor  
 or administrator, or, if there be none such, it shall, after the expira-  
 tion of four years from the appointment of the administrator, be  
 distributed ratably among all the creditors, both citizens and others,  
 who shall have proved their debts in this state. Same subject.

SECT. 26. The executor or administrator, on the estate of any  
 deceased member of a copartnership, shall include in the inventory,  
 which he is by law required to return to the judge of probate, the  
 whole of the partnership estate, goods and chattels, rights and cred-  
 its, appraised at its true value, as in other cases; but the appraisers  
 shall carry out into the footing an amount, equal only to the  
 deceased's proportional part of the copartnership interest. Appraisal of  
partnership  
property.  
1835, 191, § 1.

SECT. 27. The property thus appraised shall remain with, or  
 be delivered over, as the case may be, to the surviving partner or  
 partners or any of them, who may be disposed to undertake the  
 management thereof agreeably to the conditions of a bond, which  
 they shall be required to give to the judge of probate, in such sum  
 and with such sureties as he may think reasonable, for the benefit  
 of all persons interested in the estate, as provided in the next  
 section. To remain with  
surviving part-  
ner on his giv-  
ing bond.  
1835, 191, § 1.

SECT. 28. The condition of such bond shall be in substance as  
 follows: Condition of  
such bond.  
1835, 191, § 1.

First. To use due diligence and fidelity, in closing the affairs  
 of the late copartnership;

Secondly. To apply the property thereof towards the payment  
 of the partnership debts;

Thirdly. To render an account upon oath to the judge, when-  
 ever by him thereunto required, of all the partnership affairs, includ-  
 ing the property owned by the late firm, and the debts due thereto;  
 as well as what may have been paid by the survivor or survivors,  
 towards the partnership debts, and what may still be due and owing  
 therefor; and,

Fourthly. To pay over, within twelve months, unless a longer  
 time be allowed by a decree of the judge, to the executor, or  
 administrator, the excess, if any there be, beyond satisfying the  
 partnership debts.

SECT. 29. The judge shall have the same authority to cite such Judge's author-

**CHAP. 107.** survivor or survivors to account, and to adjudicate upon such account, as in the case of an ordinary administrator ; and the party interested shall have the like remedies, by means of such bond, for any misconduct or neglect of such survivor or survivors, as may be had against administrators.

If such partner neglect to give bond, duty of the executor, &c. 1835, 191, § 1.

**SECT. 30.** In case the surviving partner or partners, having been duly cited for that purpose, shall neglect or refuse to give the bond, required in the twenty seventh and twenty eighth sections, the executor or administrator on the estate of such deceased partner in giving a bond, as provided in the following section, shall forthwith take the whole partnership estate, goods and chattels, rights and credits, into his own possession ; and shall be authorized to the name of the survivors or survivor, in collecting the debts of the late firm, if necessary ; and shall, with the partnership property, pay the debts due from the late firm, with as much expedition as possible, and return or pay to the surviving partner, or partners, or their proportion of the excess, if any there be.

Further bonds required of executors, &c. 1835, 191, § 1.

**SECT. 31.** Before proceeding to administer upon such partnership property, as provided in the preceding section, such executor or administrator shall be required by the judge of probate, to execute further bonds, to his satisfaction, conditioned, that he will faithfully execute that trust, and with no unnecessary waste or expense, which bond may be enforced like other administration bonds, for the benefit of all parties interested.

Duty of surviving partner, in such case. 1835, 191, § 2.

**SECT. 32.** Every surviving partner, on the demand of an administrator of a deceased copartner, shall exhibit to the appraisers the partnership property, belonging to the firm at the time of the death of such deceased partner, for appraisement ; and, in case the administration thereof shall devolve upon such administrator, as provided in the two preceding sections, the said survivor shall surrender to him, on demand, all the property of such partnership, including their books and papers, and all necessary documents pertaining to the same, and shall afford him all reasonable information, and facilities, for the execution of his trust.

Compulsory process. 1835, 191, § 2.

**SECT. 33.** Every such surviving partner, who shall neglect or refuse to comply with the provisions of the preceding section, may be cited, for such neglect or refusal, before the judge of probate ; and, unless he comply with such provision, or show sufficient excuse for his omission, the judge may commit him to the common jail of the county, there to remain, till he shall consent to comply, as aforesaid, or be released by the said executor or administrator, or by the judge of probate, or by order of some judge of the supreme judicial court.

CHAPTER 108.

CHAP. 108.

THE MODES OF DISTRIBUTING REAL AND PERSONAL ESTATE, AND LANDS, HELD IN MORTGAGE OR TAKEN ON EXECUTION.

- SECT. 1. Judge of probate may order partition of REAL ESTATE, in certain cases.
- 2. Including reversions or remainders.
- 3. If the shares are not disputed, nor uncertain.
- 4. Appointment of commissioners and their duties.
- 5. Proceedings, when estate lies in different counties.
- 6, 7. Where an equal division cannot be made.
- 8, 9, 10. Where persons, not heirs, nor devisees, are interested.
- 11. Partition to embrace all or any part of the estate, if any owner require it.
- 12. Any owner may apply. What notice shall be given.
- 13. How minors, or persons insane or out of the state, shall be represented.
- 14. When the judge may assign dower to a widow.
- 15. Proceedings, where land lies in common with other persons.

- SECT. 16. What notice to be given to the cotenant.
- 17. Proceedings on the commissioners' return. Appeal.
- 18. Allowance from PERSONAL ESTATE to the widow.
- 19. When a further allowance may be made to her.
- 20. Allowance to minor children, if no widow.
- 21. Distribution of balance of personal estate.
- 22. When a specific distribution of effects may be made.
- 23. Of the collection of debts, so assigned.
- 24. When a bond to refund may be required.
- 25. Actions may be brought, for legacies, as at common law.
- 26. Lands taken by EXECUTION, or held in MORTGAGE, personal assets.
- 27. May be sold, by license of court.
- 28. Distribution of the same, if neither redeemed, nor sold.

SECTION 1. The court of probate, in which the estate of any deceased person is settled, or in a course of settlement, may make partition of all his real estate, lying within this state, among his heirs or devisees, and all holding under them, in the manner, and under the restrictions, mentioned in this chapter.

Judge of probate may order partition of real estate in certain cases.  
1821, 51, § 31.  
13 Mass. 413.  
14 Mass. 403.  
5 Pick. 210.  
21 Pick. 101.  
Including reversions or remainders.  
1821, 51, § 38.  
13 Pick. 333.

SECT. 2. Any reversion or remainder, vested in the heirs of any such deceased person, expectant upon the determination of the estate in dower of his widow, or other particular estate, under his will or otherwise, may be in like manner divided, either during the existence of such particular estate, or after the determination of the same.

SECT. 3. No partition shall be made by the probate court, when the shares or proportions of the respective parties are in dispute between them, or shall appear to the judge to be uncertain, depending upon the construction or effect of any devise, or other conveyance, or upon any other questions, that he shall think proper for the consideration of a jury, and a court of common law.

If the shares be not disputed, nor uncertain.  
1821, 51, § 35.  
16 Mass. 167.

SECT. 4. The partition shall be made by three disinterested persons, to be appointed, as commissioners for that purpose by the judge of probate; and they shall, before proceeding to the exercise of their duties, be duly sworn before the said judge, or before any justice of the peace; and they shall make such partition, pursuant to the will of the deceased, or the laws regulating the descent and distribution of intestate estates, as the case may be, among all the

Appointment of commissioners, and their duties.  
1821, 51, § 31.

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SECT. 5. If there be estate to be divided, lying in different counties, the judge of probate may, if he shall think fit, issue separate warrant, and appoint different commissioners for any either of said counties; and, in such case, the partition shall be made of the estate in each county in like manner, as if there were no other estate to be divided.

SECT. 6. When the whole or any part of the premises, of which partition is to be made, being of greater value than either party's share, cannot be divided, without great inconvenience, the same may be set off to any one or more of the parties, who will accept it, and pay, to any one or more of the others, such sums of money, as the commissioners shall award, to make the partition just; but such partition shall not be established by the court, until all such sums shall be paid or secured, with interest, to the satisfaction of the party entitled to the same; nor if inconsistent with the condition of any devise, under which the parties claim.

SECT. 7. In such assignment, as is provided in the preceding section, males shall be preferred to females; and among the children of the deceased, elder shall be preferred to younger children of the same sex.

SECT. 8. No conveyance, made or suffered by any heir or devisee, of his interest in the lands of any intestate or testator, by deed, levy of execution or otherwise, shall take from the judge of probate his jurisdiction to divide and assign such lands amongst the heirs or devisees, in manner aforesaid; but the same shall enure to the use of the equitable owner of the part so conveyed.

SECT. 9. In case of unequal division, as provided in section six, of this chapter, the grantee or execution creditor, representing the right of any such heir or devisee, shall, on the decree of the judge in his favor, after due notice to such heir or devisee, be entitled to receive the money, payable to such heir or devisee, or such part thereof, as shall be proportional to his equitable interest; provided that, previously to the acceptance of any such division by the judge, he shall have made application in writing to the judge, for the same.

SECT. 10. If the share of any such heir or devisee be under attachment, the judge, on the like application from the plaintiff in the suit, or of the attaching officer, shall require the money, not exceeding the amount of the attachment, to be paid over to the officer, who shall be answerable therefor in his official capacity; subject to the respective rights of the parties, as if originally attached.

SECT. 11. Every partition, when made by the judge of probate, on the application of an heir, shall be made amongst all the owners of all the estate, that descended from the ancestor, and which any party interested, whether the applicant or others, shall require to have included in the partition; and, when made on the application of a devisee, it shall be made of all the estate held by the applicant, jointly or in common with others holding under the testator, which he or any other devisee shall require to have included; and

Proceedings, when estate lies in different counties. 1821, 51, § 31.

Where an equal division cannot be made. 1821, 51, § 31, 36. 1 Mass. 323. 12 Mass. 367. 15 Mass. 291. 16 Mass. 122. 7 Pick. 209.

Same subject. 1821, 51, § 31. 11 Mass. 507. 7 Pick. 209.

Where persons, not heirs, nor devisees, are interested. 1821, 51, § 31. 17 Mass. 81.

Same subject. 17 Mass. 81.

Same subject.

Partition to embrace all or any part of the estate, if any owner require it. 1821, 51, § 33. 3 Fairf. 463.

the same rule shall apply, when the application is made by any person, holding under an heir or devisee. CHAP. 108.

**SECT. 12.** Such partition may be ordered, on the petition of any of the owners of any share, after due notice to all the others to appear and shew cause against it; which notice shall be served, fourteen days at least before the time appointed for the hearing, on the other owners personally, if they can be found within the state, and, not, the notice shall be given by publishing it, in such newspaper newspapers, as the court shall order, once in each week, for three weeks at least before such hearing.

**SECT. 13.** If it shall appear to the court, that any minor, or sane person, is interested in the premises, having no guardian within the state, the court shall assign him a guardian for the suit, appear for him and defend his interest therein, as guardians are signed in actions at common law; and, if any one resides without the state, having no agent therein, the judge shall appoint an agent for such owner, for the same purpose.

**SECT. 14.** Any widow, entitled to dower in any estate, of which her husband died seized, settled or in a course for settlement in any court of probate, may apply to the judge and have her dower assigned to her, on the principles stated in chapter, ninety five, unless her claim is disputed by some adverse party; and the judge, for that purpose, shall issue his warrant to three suitable persons, to assign the same, and the like notice shall be given, and the like proceedings, so far as applicable, shall be had by the court, and by the commissioners, as is provided in this chapter, for division of lands amongst heirs and devisees.

**SECT. 15.** In all cases of partition or assignment of dower, pending before any judge of probate, when the real estate of the deceased, or any part of it, shall lie in common and undivided with that of any other person, the court may cause it to be divided and set off from the part held by such cotenant, before making partition thereof, among the heirs or others claiming under the deceased.

**SECT. 16.** The court, in such case, shall order notice of the intended partition or assignment of dower, to be given to the cotenant; which notice shall contain a description of the premises to be divided, with a statement of the share or proportion claimed, as belonging to the estate of the deceased, and shall express the time and place appointed for hearing the case; and it shall be served on the cotenant, by delivering to him an attested copy thereof, or by leaving such copy at the place of his abode in this state, if any, fourteen days at least before the time appointed for the hearing. If such cotenant do not reside within the state, such public or special notice shall be given, as the judge may require.

**SECT. 17.** The judge may, for any sufficient reason, set aside the return of the commissioners, and commit the case anew to the same or to other commissioners; and the return, when finally accepted and confirmed by the court, shall be recorded in the probate office, and also in the registry of deeds for the county, in which the lands lie; saving, to all parties interested, the right to appeal to the supreme court of probate, as provided in chapter, one hundred and

Any owner may apply. What notice shall be given. 1821, 51, § 33.

How minors, or persons insane, or out of the state, shall be represented. 1821, 51, § 33.

When the judge may assign dower to a widow. 9 Mass. 10.

Proceedings, where land lies in common with other persons. 1821, 51, § 32.

What notice to be given to the cotenant. 1821, 51, § 32.

Proceedings on the commissioners' return. Appeal. 1821, 51, § 33, 35. 8 Mass. 132. 3 Fairf. 198.



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Allowance from personal estate to the widow. 1821, 51, § 39. 1835, 180. 15 Mass. 183. 10 Pick. 374. 17 Pick. 422.

When a further allowance may be made to her. 1821, 51, § 39.

Allowance to minor children, if no widow. 1821, 51, § 39.

Distribution of balance of personal estate. 1821, 38, § 19. 1821, 51, § 41. 1 Metc. 204.

When a specific distribution of effects may be made.

Of the collection of debts, so assigned.

When a bond to refund, may be required. 1821, 51, § 42. 1830, 470, § 9.

Action of debt may be brought, for legacies. 1821, 51, § 43.

SECT. 18. In the settlement of any intestate estate, or of an insolvent estate, testate, or in which the widow shall have claimed her dower, the widow, besides her apparel and ornaments, shall be entitled to so much of the personal estate, as the judge shall determine to be necessary, according to the degree and estate of husband, regard being had to the state of the family under her care.

SECT. 19. When such allowance shall have been made from an estate, represented insolvent, which shall ultimately appear to solvent, the judge, by a subsequent decree, may make such further allowance to the widow therefrom, as he shall deem reasonable.

SECT. 20. In all insolvent estates, whether testate or intestate, if there be no widow, the judge shall have like authority to make an allowance of personal estate, to the minor children of the deceased, if under the age of fourteen years, or, from ill health, unable to labor, exclusive of their wearing apparel and books.

SECT. 21. Whenever, on the settlement of any account of an administrator or executor, there shall appear to remain in his hands any goods and chattels, rights and credits, not necessary for the payment of debts and expenses of administration, the judge shall order the same, if not specifically bequeathed, to be distributed, according to the provisions of the will of the deceased, if any, so far as they may be directed by the same, and otherwise, according to the provisions of chapter, ninety three; and alienage shall be no impediment to any person, who is entitled, in other respects, to receive the same.

SECT. 22. When the surplus, mentioned in the preceding section, shall consist of any other property, besides money, the judge may order a specific distribution of the same, in proportion to the value thereof; and for this purpose, if found convenient, he may appoint one or more appraisers to value and make a specific distribution of the same, under oath, and make report thereof to the judge for his acceptance.

SECT. 23. If any evidence of debt, or any account due to the deceased, shall be thus assigned, the person receiving the same shall be authorized to use the name of the executor or administrator, to collect the same by suit or otherwise, on giving such indemnity against the costs and expenses, as the judge may order; saving to all supposed debtors the right to set off any claim, which they may have against the estate of the deceased.

SECT. 24. Whenever any executor or administrator, shall pay to any creditor, heir or legatee, any sum, exceeding thirty dollars on account of any debt, legacy, or decree of distribution among the widow and kindred of the deceased, the judge of probate, in his discretion, may authorize him to require of the payee, a sufficient bond, to refund so much of the sum, so paid, as the same may exceed such payee's equitable proportion on final settlement of the estate; unless such payment be made to a creditor, under an order of distribution of an insolvent estate.

SECT. 25. Any residuary legatee, or any person having a particular legacy given him, under any last will, may sue for and recover the same of the executor, in an action of debt at common law.

**SECT. 26.** When an executor or administrator shall recover judgment for any debt due to the deceased, and shall levy the execution on real estate, or when the deceased held any real estate in mortgage, without having foreclosed the right of redemption, the executor or administrator of the deceased shall be seized of such real estate, in trust for the persons, who would have been entitled to the money, if the same had been paid; and the same shall be accounted for as personal assets in his hands, and, if redeemed, the money shall be received by him to the same uses, and he may release the estate.

**SECT. 27.** Any real estate, so levied upon, or held in mortgage, may be sold, though subject to the right of redemption, if not foreclosed, for the payment of debts or legacies, and the charges of administration, in the same manner as any real estate, of which the deceased person died seized; such sale to be made by the executor or administrator, on license to be obtained, as provided in chapter, one hundred and twelve.

**SECT. 28.** If the real estate, so levied upon, or held in mortgage, shall not be redeemed, nor necessary for the payment of debts, and disposed of agreeably to the preceding section, the same shall be distributed amongst those, who are entitled to the personal estate, but in the same manner, as is provided in this chapter, for the distribution of the real estate; or the judge of probate, if he find it more for the benefit of the parties in interest, may order the same to be sold by the executor or administrator, in the same manner as is provided in the preceding section, and the money realized from such sale, to be distributed, as in other cases of personal estate.

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Lands, taken by execution, or held in mortgage, personal assets.

1821, 39, § 9, 10.

1821, 52, § 16,

17.

3 Mass. 220,

262.

4 Mass. 598.

5 Mass. 240.

6 Greenl. 127.

8 Pick. 29.

May be sold, by license of court.

1821, 39, § 9, 10

1821, 52, § 16.

Distribution of

the same, if

neither redeemed,

nor sold.

1821, 52, § 16.

**CHAPTER 109.****OF INSOLVENT ESTATES.**

**SECT. 1, 2.** Of priority of claims against insolvent estates.

**3.** Representation of insolvency. Appointment of commissioners.

**4.** When commissioners may not be appointed.

**5.** Notice of their meetings.

**6.** Times, within which claims must be made. How they must be stated.

**7, 8.** Claimant may be sworn to make true answers. Witnesses.

**9.** Allowance of interest.

**10.** Value of collateral security to be deducted by commissioners.

**11.** If either party be dissatisfied, judge may appoint appraisers. Proceedings.

**12.** Report of commissioners. Their fees.

**SECT. 13, 14, 15, 16.** Of contingent claims.

**17.** On dissatisfaction of either party, claim to be determined at common law.

**18, 19, 20, 21.** Course of proceeding.

**22.** Such claim may be submitted to referees.

**23.** Claimant may be examined, upon oath.

**24.** Judgment, added to the list of debts.

**25.** Allowance of costs.

**26.** Settlement of administrator's private claim, by the judge.

**27.** Decree of distribution. Recommitment in case of mistake.

**28.** What actions may be brought, after representation of insolvency.

**29.** When claims, not presented to commissioners, are recoverable.

<p><b>CHAP. 109.</b> SECT. 30. Account to be rendered within six months, or bond forfeited.</p> <p>31. When there may be a subsequent commission of insolvency.</p> <p>32. What claims may be then allowed.</p> <p>33. When representation must be made. Prior claims not affected.</p>	<p>SECT. 34, 35. Disposal of unavailable debt</p> <p>36. Provisions extended to executor</p> <p>37. Waste on real estate of person deceased, insolvent.</p> <p>38. Of insolvency, when executor has given bonds, as residuary legatee</p>
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Of priority of claims against insolvent estates. 1821, 51, § 25.

**SECTION 1.** Where any estate, under administration, is found to be insufficient to pay all the claims, existing against the same, the funds, for which the administrator is accountable, after payment of the expenses of the funeral and of administration, shall be applied in the following order:

8 Greenl. 167.

*First.* To the allowance from the personal estate, made by the judge of probate to the widow or children of the deceased;

*Second.* To the expenses of the last sickness of the deceased

*Third.* To debts entitled to a preference, under the laws of the United States;

*Fourth.* Public rates and taxes, and moneys due the state;

*Fifth.* All other debts..

Same subject. 1821, 51, § 25.

**SECT. 2.** No payment shall be made to creditors of any one class, until all those of the preceding class or classes, of whose claims the administrator shall have had notice, shall be fully paid.

Representation of insolvency. Appointment of commissioners. 1821, 51, § 25. 11 Pick. 173.

**SECT. 3.** Whenever it shall appear to the judge of probate from the representation of the administrator, that the estate of the deceased will probably be insufficient for the payment of his debts, the judge, except as provided in the following section, shall appoint two or more fit persons to be commissioners, to receive and examine all claims of creditors against the estate of the deceased, excepting any which the administrator may have, and to return to the probate court a list of all the claims, that shall have been laid before them, with the sum that they shall have allowed on each claim, and the commissioners, before entering on the duties of their office, shall be duly sworn.

When commissioners may not be appointed. 1838, 322.

**SECT. 4.** But if the funds shall not be sufficient to extend beyond the payment of the expenses of the funeral and administration and the allowance to the widow and children, as aforesaid, it shall not be necessary to appoint commissioners; and the administrator shall be exonerated from the payment of any claim of any subsequent class.

Notice of their meetings. 1821, 51, § 25.

**SECT. 5.** The commissioners of insolvency shall appoint convenient times and places, for their meetings to receive and examine the claims of creditors; and shall give notice thereof, by causing an advertisement to be printed in such public newspaper or paper, or by such other notice, as the judge shall direct.

Times, within which claims must be made. 1821, 51, § 25. 5 Greenl. 45. 6 Pick. 458.

**SECT. 6.** The period of six months after the appointment of the commissioners shall be, in the first instance, allowed for the creditors to present and prove their claims; and, if necessary, an additional time, not exceeding eighteen months in the whole, from the date of the commission, at the discretion of the judge, may be allowed for the reception and examination of claims generally, or of any particular claim or claims, to be specified in the order of the judge. All claims, presented to the commissioners, shall be in writing, supported by affidavit of the party or some person conusant

How they must be stated.

thereof; and it shall be specified, what security the claimant has, and the amount of credit to be given in set off, if any, to the best knowledge and belief of such claimant or person. CHAP. 109.

SECT. 7. The commissioners may, when they shall think it proper, require an oath to be administered by either of them to any claimant, to make true answers to all such questions, as shall be asked of him by them, relating to his claim, and they may thereupon examine him upon all matters relating thereto; they may also administer oaths to, and examine such witnesses, as may be produced before them. Claimant may be sworn, to make true answers. Witnesses. 1321, 51, § 26.

SECT. 8. If any claimant refuse, when required, to submit to examination as aforesaid, his claim shall be rejected; and, if any such claimant, or any witness sworn as aforesaid, shall wilfully and corruptly make any false answer or declaration relating to any claim under examination, he shall be deemed guilty of perjury, and liable to the punishment, prescribed for that crime in chapter, one hundred and fifty eight. Same subject. 1321, 51, § 27.

SECT. 9. The commissioners shall cast interest on all claims allowed by them, from the time of the death of the testator, or intestate to the time of making their report, whether the claims expressly bear interest or not, unless otherwise stipulated in the contract. Allowance of interest. 13 Mass. 537.

SECT. 10. If any creditor hold, as collateral security for his claim, any mortgage or pledge of real or personal estate, or any note or other evidence of debt, being of less value than the amount due him, he shall be allowed only the difference between such amount and the value of the security taken, to be estimated by the commissioners, who may at either of their meetings give the creditor a certificate of such estimate. Value of collateral security to be deducted by commissioners. 16 Mass. 308. 16 Pick. 255.

SECT. 11. If such creditor or administrator be dissatisfied with said estimate, the judge, on his application, and production of the said certificate, and notice to the administrator, may appoint a committee of three disinterested and discreet men, who shall be under oath to examine and appraise the said mortgaged property, and make return of their appraisal under their hands to the probate court: and such appraisal shall be substituted for the first appraisal by the commissioners, and the difference added to, or deducted from, the balance of the claim as allowed by the commissioners. And if the creditor shall decline to take the property, at the appraisal of the committee, on his relinquishing his claim thereon, the judge of probate shall add the amount of such appraisal to his claim as allowed, and he shall be entitled to his dividend on the whole amount, and the property shall be disposed of by the administrator according to law. If either party be dissatisfied, judge may appoint appraisers. Proceedings. 16 Mass. 308. 6 Pick. 481.

SECT. 12. At the expiration of the time limited, the commissioners shall make their report to the judge, who shall order the administrator to pay their legal fees. Report of commissioners. Their fees. 1821, 51, § 25.

SECT. 13. Any person, liable as surety for the deceased, or having any other contingent claim, may exhibit the same, and, if proved, the commissioners may report the amount thereof; distinguishing it from the absolute claims allowed, and stating the nature of it. Of contingent claims. 1835, 191, § 5.

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Same subject.

**SECT. 14.** The judge, in ordering a distribution, as hereinafter provided, shall leave in the hands of the administrator a sum, sufficient to pay, to such contingent creditor, a proportion equal to what shall then be paid to the other creditors.

Same subject.

**SECT. 15.** If, at any time within four years after the date of the administration bond, such contingent debts shall appear, to the satisfaction of the judge, to have become absolute, the creditor shall be entitled to a dividend thereon, equal to what shall have been paid to the other creditors, so far as the same can be paid without disturbing any former dividend.

Same subject.

**SECT. 16.** If such claim be not established within said term of four years, or if it shall not be sufficient to exhaust the assets in the hands of the administrator, the residue of the assets shall remain for the benefit of the other creditors.

On dissatisfaction of either party, claim to be determined at common law. 1821, 51, § 25. 1 Mass. 23, 431. 6 Pick. 330. 14 Pick. 8, 274. 15 Pick. 385. 18 Pick. 256.

**SECT. 17.** Any person, whose claim shall be disallowed, in whole or in part, by the commissioners, and any administrator, who shall be dissatisfied with the allowance of any claim, may appeal from the decision of the commissioners, and the claim shall thereupon be determined at common law.

Course of proceeding. 1821, 51, § 25.

**SECT. 18.** Such appeal shall be claimed, and notice thereof shall be given, in writing, at the probate office, within twenty days after the return of commissioners; and in case of an appeal by an administrator, he shall also give notice to the creditor within thirty days, by serving a copy of the former notice, attested by the register, upon him, or his agent or attorney, personally, or by leaving such copy at his usual place of abode, if he, or such agent or attorney, reside within the state.

Same subject.

**SECT. 19.** Whenever such appeal shall have been claimed, the demand shall be deemed contingent, and, until the decision thereof provision shall be made for the same, as is provided in the fourteenth and fifteenth sections of this chapter.

Same subject. 1821, 51, § 25. 15 Mass. 455. 4 Pick. 122.

**SECT. 20.** The creditor, within a reasonable time, in any case not exceeding three months after the report of the commissioners shall have been returned, shall prosecute his claim against the administrator in an action for money had and received; in which action he may annex to his writ, before service, a schedule of his claims, and the nature thereof, or he may file in the office of the clerk of the court, to which the action shall be brought, such schedule, fourteen days at least before the return day of the writ or if such action be brought before a justice of the peace, the schedule may be filed with the justice, seven days at least, before such return day.

Same subject. 2 Mass. 498. 18 Pick. 403.

**SECT. 21.** In every such case, the administrator, at such time as the court may direct, shall file an abstract of all the demands which the deceased may have left against the supposed creditors, and judgment shall be rendered for either party, as the case may be, upon the balance to be ascertained at the trial.

Such claim may be submitted to referees. 1821, 51, § 25.

**SECT. 22.** Whenever an appeal from the decision of the commissioners shall be claimed, the parties may submit the matter to referees, to be agreed upon between them, and appointed by a rule of the probate court; and their award shall be final.

Claimant may

**SECT. 23.** On the trial of such appeal before any court

referees, the creditor may be examined upon oath, as before the commissioners, and, if he refuse to take the oath, or to answer fully upon examination, his claim shall not be allowed. CHAP. 109.

SECT. 24. On final judgment in any action, upon appeal as aforesaid, whether at common law or before referees, no execution shall issue, if determined against the administrator, except for costs; but the sum, thus ascertained to be due to the claimant, shall be entered upon the list of debts, entitled to dividends from the estate, as is provided in regard to contingent claims, in section, fifteen, of this chapter. be examined, upon oath. 1821, 51, § 26. Judgment added to the list of debts. 1821, 51, § 25.

SECT. 25. On all such appeals, costs may be allowed to the prevailing party; but, if awarded against the administrator, when appellee, the same may be charged by him against the estate; otherwise, where he shall be the appellant, unless the judge of probate shall be satisfied, that he had reasonable cause to appeal. Allowance of costs. 13 Mass. 537.

SECT. 26. Any private claim, which the administrator may have against the estate, may be examined and allowed by the judge, and annexed to the list of claims reported by the commissioners, and a proportional dividend thereon reserved to the administrator. Settlement of administrator's private claim, by the judge.

SECT. 27. After the expiration of thirty days from the return, made by the commissioners, the judge of probate may make such a decree for the distribution of the effects amongst the creditors, as the case shall require, according to the provisions of this chapter; and the judge shall have power, before ordering a distribution to be made thereon, to recommit the report to the commissioners for the purpose of correcting any error or mistake, satisfactorily appearing to him to exist. If, at any future time, there should be assets sufficient for other distributions, he may order the same to be made on the same principles. Decree of distribution. Re-commitment in case of mistake. 1821, 51, § 25. 1840, 21, § 2.

SECT. 28. No action shall be brought against an administrator, after the estate is represented insolvent, unless it be for a demand, which is entitled to a preference, and would not be affected by the insolvency of the estate; or unless the assets should prove more than sufficient to pay all the debts allowed by the commissioners; and, if the estate is represented insolvent, whilst an action is pending against the administrator, for any demand, that is not entitled to such preference, the action may be discontinued without the payment of costs, or, if the demand is disputed, the action may be tried and determined, and judgment rendered thereon, in the same manner, and with the same effect, as is provided in the case of an appeal from the award of the commissioners: or the action may be continued, at the discretion of the court, without costs to either party, until it shall appear, whether the estate is insolvent; and, if it should prove not to be insolvent, the plaintiff may prosecute the action, as if no such representation had been made. What actions may be brought, after representation of insolvency. 1821, 51, § 25. 1 Mass. 504. 4 Mass. 620. 10 Mass. 170. 15 Mass. 264. 2 Greenl. 8, 109. 7 Pick. 239.

SECT. 29. Every creditor of an estate found to be actually insolvent, who shall not have presented his claim for allowance, in the manner prescribed in this chapter, shall be forever barred from recovering the same, unless further assets of the deceased shall come to the hands of the administrator, after the decree of distribution; in which case, his claim, if not disputed by the administrator, or if proved to the satisfaction of the judge, may be allowed and paid, When claims, not presented to commissioners, are recoverable. 1821, 51, § 25. 4 Mass. 620. 15 Mass. 140, 148.

**CHAP. 109.** in the manner and with the limitations, provided in this chapter the case of contingent debts.

Account to be rendered within six months, or bond forfeited. 1821, 51, § 23. 1833, 62, § 3. 9 Mass. 114. 5 Greenl. 45. 6 Greenl. 268. 8 Greenl. 22. 2 Fairf. 50. 21 Pick. 58.

When there may be a subsequent commission of insolvency. 1830, 470, § 8.

What claims may be then allowed. 1830, 470, § 8.

When representation must be made. Prior claims not affected. 1830, 470, § 8.

Disposal of unavailable debts. 1835, 191, § 3.

Same subject. 1835, 191, § 3.

**SECT. 30.** Whenever the commissioners shall have duly reported to the judge a list of claims allowed, if the administrator shall neglect to exhibit and settle his account of administration with the judge, within six months after the report shall have been made, within such further time as the judge shall think proper to allow therefor, such neglect shall be deemed a breach of the administration bond.

**SECT. 31.** Whenever it shall appear, that the assets in the hands of the administrator are more than sufficient for the payment of the full amount of all the claims allowed, and interest thereon, and the administrator shall apprehend, that there may not be assets sufficient to pay all such other claims as may be adduced, under the provisions of this chapter, together with the charges of administration, the administrator may make representation to the judge, whose duty it shall be to issue another commission of insolvency returnable in sixty days; and like proceedings shall be had as in other cases.

**SECT. 32.** After a distribution, ordered on any commission of insolvency, no claim shall be allowed on any such subsequent commission, unless demanded of the administrator within three years after he shall have accepted the trust; neither shall he be liable to any action to be commenced thereon after that time; provided, that within thirty days, or at the first regular probate court after the expiration of said three years, said claim having been duly presented, the administrator shall make further representation of insolvency, as provided in the preceding section.

**SECT. 33.** No such subsequent commission shall be issued unless representation be made within the thirty days, or at the first probate court after the three years, mentioned in the preceding section; and no dividend shall be made thereon, so as to prevent the full payment of the claims before allowed or provided for, with interest.

**SECT. 34.** Whenever an administrator in his said capacity holds notes, accounts or other demands of the deceased, which, in the opinion of the judge, with due diligence on the part of the administrator, are not available as assets, beyond the probable expenses of collection, on account of the poverty of the persons liable, or of the disputable nature of the demands, the judge may order the same to be assigned, as provided in the following section; reserving to such persons liable, their equitable right of set off, and the assignee giving to the administrator such indemnity against costs, as the judge may require.

**SECT. 35.** After due notice to all persons interested, such demands, or any of them, may be transferred to the following parties, with authority to collect the same in the name of the administrator, they, to be entitled to preference in the following order, if applied for by themselves, their attorney or guardian, viz:

*First.* To the largest creditor, who will take the same, at their nominal value, to be deducted from the amount of his claim before distribution of the assets;

*Secondly.* To the widow of the deceased, if any ; and

*Thirdly.* To the minor children of the deceased in equal proportions.

SECT. 36. The word, " administrator," in the preceding sections of this chapter, shall be construed as including in its signification the word, " executor." Provisions extended to executors.

SECT. 37. If any executor or administrator of an insolvent estate shall commit such waste or trespass upon any real estate, as is described in the fifteenth section of chapter, one hundred and twenty nine, whether he be an heir or devisee thereof, or not, or if he shall consent to any such waste or trespass by any other person, he shall be liable to account for treble the amount of the damage done to the real estate, as aforesaid ; and such administrator or executor shall have power to prosecute actions of trespass against any persons committing such waste, whether they be heirs or devisees, or not, and the damages so recovered shall also be accounted for, as assets. Waste on real estate of persons deceased, insolvent. 1835, 191, § 4.

SECT. 38. Any executor, who may have given bond as a residuary legatee, pursuant to the provisions of section, nine, of chapter, one hundred and six, if the estate under his care, from some unexpected event, prove insufficient for the payment of debts, may represent the same, insolvent ; and like proceedings and distribution shall be had, as is provided in this chapter for other cases ; and the said executor, or his surety, in any suit brought upon his bond, may avail himself of such insolvency and distribution, in bar of such action. Of insolvency, when executor has given bonds, as residuary legatee. 1830, 470, § 7.

## CHAPTER 110.

### OF GUARDIANS.

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| <p>SECT. 1, 2, 3. How guardians to minors may be nominated and appointed.</p> <p>4. When minors' choice may be certified by a justice of the peace.</p> <p>5. Of the authority of a guardian over the minor's person and property.</p> <p>6. Executor, &amp;c. not to be guardian.</p> <p>7. Guardians of insane and other persons, not minors.</p> <p>8. Inquisition to be made by selectmen.</p> <p>9. Of their return and hearing thereon. Appointment of guardian.</p> <p>10. Proceedings, where the selectmen or overseers of the poor are applicants.</p> <p>11. Copy of application may be filed in the registry of deeds ; the effect thereof.</p> <p>12. Respondent's expenses for his defence, a charge on his estate.</p> | <p>SECT. 13. Assessors of plantations authorized, as selectmen.</p> <p>14. Authority and duty of guardian.</p> <p>15. His bond.</p> <p>16. Estate of the ward, to be appraised.</p> <p>17. Proceedings on suspicion of embezzlement of the wards property.</p> <p>18. Punishment of guardian for embezzlement.</p> <p>19. Guardian's duty.</p> <p>20. From what funds debts may be paid.</p> <p>21. Settlement of the ward's accounts. Guardian to appear for him in suits.</p> <p>22. Guardian's powers in reference to real estate in special cases.</p> <p>23. Sales, and investments of funds, by order of the judge.</p> |
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- CHAP. 110.** **SECT. 24.** Married women, not to be guardians, nor husbands, in right of wives.
25. Of the removal of guardians.
26. Guardianship over female minors ceases, on marriage of wards.
27. Guardians to settle with judge, at least once in three years.
28. Consequences of neglect of such duty.
29. On settlement, bond to be examined.

- SECT. 30.** Accounts by two or more joint guardians.
31. Disabilities of persons over twenty one years of age, when under guardianship.
32. Guardianship of persons out of the state, granted in one county only for the state.
33. Guardians appointed and next friends allowed by courts, in suit at law.

How guardians to minors may be nominated and appointed. 1821, 51, § 46, 52.

**SECTION 1.** The judge of probate, in each county, when it shall appear to him necessary and convenient, may appoint guardians to minors, being inhabitants of or residents in the same county and also to such, as shall reside without this state; and have an estate within his county.

Same subject. 1821, 51, § 46, 52.

**SECT. 2.** If the minor is under the age of fourteen years, the judge of probate may nominate and appoint his guardian, and, if he is above the age of fourteen years, he may nominate his own guardian; who, if approved by the judge, shall be appointed accordingly, notwithstanding he may have had a guardian appointed before he arrived at that age.

Same subject. 1821, 51, § 46, 52.

**SECT. 3.** If the guardian, nominated by such minor, shall not be approved by the judge, or if the minor shall reside without the state, or if after being cited by the judge, he shall neglect to nominate a suitable person, or one who will accept the trust, the judge may nominate and appoint the guardian, in the same manner, as if the minor were under the age of fourteen years.

When minor's choice may be certified by a justice of the peace. 1821, 51, § 46.

**SECT. 4.** When such minor, being above the age of fourteen years, shall reside more than ten miles from the place of holding the next probate court, his nomination of a guardian may be certified to the judge of probate, by a justice of the peace; which shall have the same effect, as if made in the presence of the judge.

Of the authority of a guardian over the minor's person and property. 4 Mass. 675. 6 Mass. 273.

**SECT. 5.** Every guardian, appointed as aforesaid, shall have the custody and tuition of the minor, and the care and management of all his estate, and shall continue in office, until the minor shall arrive at the age of twenty one years, unless sooner discharged according to law; provided, however, that the father of the minor, if living, and in case of his death, the mother, while she remains unmarried, being themselves, respectively, competent to transact their own business, shall be entitled to the care of his person and education.

Executor, &c. not to be guardian. 1821, 51, § 46. Guardians of insane and other persons, not minors. 1821, 51, § 49.

**SECT. 6.** No executor or administrator on an estate, shall be appointed guardian to any minor, interested therein.

Insane persons. 1823, 360, § 1, 2. 8 Mass. 129.

**SECT. 7.** The judge of probate in any county may appoint guardians to the following persons, though more than twenty one years of age, belonging to such county, on application in writing, of any of the friends, relations or creditors of such person, or of the selectmen or overseers of the poor of the town where he belongs:

*First.* Insane persons, including insane married women, whose husbands have left them, without making provisions for their support;

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**Secondly.** Spendthrifts, who, by excessive drinking, gaming, idleness, or debauchery of any kind, shall so spend, waste or lessen their estate, as to expose themselves, or their families, to want or suffering, or their towns, to charge or expense;

Spendthrifts.  
1821, 51, § 53.  
12 Pick. 152.  
18 Pick. 496.

**Thirdly.** Such persons, as, by excessive drinking, gaming or debauchery, shall render themselves incapable of managing their own affairs;

Intemperate persons.  
1832, 13, § 1.

**Fourthly.** Convicts committed to the state prison, for a term, not less than one year, and not for life.

Convicts.

**SECT. 8.** Before appointing any such guardian, except in the last mentioned instance, the judge shall issue his warrant to the selectmen of the town where the person resides, concerning whom such application is made, requiring them to make inquisition into the facts, stated in the application; and the selectmen shall decide upon such evidence, as they may be able to obtain, whether the facts, so stated, are true; and, as soon as may be, they shall report the result to the judge.

Inquisition to be made by selectmen.  
1821, 51, § 49.  
1832, 13, § 1.

**SECT. 9.** If, on the report of the said selectmen, and on due notice to the person, concerning whom the application is made, and a hearing thereon by the judge of probate, he shall adjudge such person to be insane, or a spendthrift, or incapacitated, as aforesaid, he shall appoint a guardian or guardians, with the powers hereinafter specified.

Of their return and hearing thereon. Appointment of guardian.  
1821, 51, § 1.  
14 Mass. 222.  
5 Pick. 490.

**SECT. 10.** But whenever the selectmen, or the overseers of the poor of such town, are the applicants, and it shall appear, that they have given, at least, fourteen days notice thereof to the person, concerning whom the application is made, by serving him with a copy of their application, the judge, if such person be present, or on such further notice as he may think reasonable, if any, may appoint such guardian, if he finds it proper, without any further inquisition.

Proceedings, where the selectmen or overseers of the poor are applicants.

**SECT. 11.** Whenever application shall have been made, as provided in section, seven, of this chapter, and notice shall have been issued thereon by the judge of probate, the applicants may cause a copy of their application, and the order of court thereon, to be filed in the registry of deeds for the county; and, if a guardian shall be appointed thereupon, all contracts, excepting for necessities, and all gifts, sales or transfers of real or personal estate, made by the person who is [the] subject of such application, after the filing of the same as aforesaid, and before the termination of the guardianship, shall be void; provided, that this section shall not be construed as adding, by implication, any thing to the validity of any such act by any such person, previously to the filing of such copy.

Copy of application may be filed in the registry of deeds; the effect thereof.  
1821, 51, § 53.  
3 Pick. 229.

**SECT. 12.** When a guardian shall have been appointed under such application, the judge shall make an allowance, to be paid by the guardian from the ward's estate, for all reasonable expenses incurred by the ward in defending himself against the complaint.

Respondents expenses of his defence, a charge on his estate.

**SECT. 13.** When such person shall reside on lands, not within any incorporated town, all acts authorized to be done by the selectmen, respecting the guardianship of such person, shall and may be done by the assessors of the district or tract, if it be an organized plantation in the same county.

Assessors of plantations authorized, as selectmen.

**SECT. 14.** Guardians, appointed under the provisions of said

Authority and

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duty of guardian.  
1821, 51, § 49,  
53.  
5 Mass. 427.

seventh section, shall have the custody of the person of their wards, if such wards reside within the state, excepting so far as the court of probate, from time to time, may otherwise order. And it shall be the duty of every guardian appointed over any person for gaming, idleness, drinking or debauchery, to inculcate habits of sobriety and industry in his ward, and, when of sufficient health and strength, with the approbation of the judge of probate, he may bind out his ward to labor, not exceeding six months at any one time, or employ him in his own service; giving credit for his earnings, or such sum as he may receive therefor.

His bond.  
1821, 51, § 46,  
53.  
1830, 470, § 11.  
1832, 13, § 1.

SECT. 15. Every guardian, appointed for minors or other persons, under the provisions of this chapter, shall give bond to the judge of probate, in such sum, and with such surety or sureties resident within this state, as the judge shall accept, conditioned as follows:

*First.* For the faithful discharge of his trust;

*Secondly.* To render a true and perfect inventory of the estate property and effects of his ward, as appraised by three persons under oath, to be appointed by the judge of probate, within the time limited by law;

*Thirdly.* To render a just and true account of his guardianship, as often as, and whenever, by law required;

*Fourthly.* At the expiration of his trust, to pay and deliver over all moneys and property, which, on a final and just settlement of his accounts, shall appear to be remaining in his hands.

Estate of the ward, to be appraised.  
1821, 51, § 47.  
1830, 470, § 3,  
11.  
1832, 13, § 1.

SECT. 16. On the appointment of every guardian, under any of the foregoing provisions, the judge of probate may appoint three suitable disinterested persons to appraise the estate of the ward, in like manner, as estates under administration, may be appraised, as is mentioned in chapter, one hundred and six, sections, twenty three and twenty four; and the guardian shall return the inventory, under oath, within such time as the judge, in his warrant to the appraisers, shall direct, if the ward be a minor, and in all other cases, within three months after the appointment of the guardian.

Proceedings on suspicion of embezzlement of the ward's property.  
1821, 51, § 50.  
1832, 13, § 2.

SECT. 17. Upon complaint made to the judge of probate, by any guardian, or by the ward, or by any creditor, or other person interested in his estate, or by any person having claims thereto in expectancy, as heir or otherwise, against any one suspected of having concealed, embezzled or conveyed away any of the money, goods or effects of the ward, the judge may cite and examine such suspected person; and proceed with him as to such charge, in the same manner, as is provided respecting persons, suspected of concealing or embezzling the effects of a deceased testator or intestate.

Punishment of guardian for embezzlement.  
1825, 315, § 8.

SECT. 18. If any guardian, having the charge and custody of any money, bill, note, bond, evidence of debt, or any property, whatever, belonging to his ward, shall, in violation of his trust, embezzle the same, or fraudulently convert the same to his own use, he shall be punished by fine, not exceeding five thousand dollars, or confinement to hard labor for a term, not exceeding ten years, or both, according to the circumstances of the offence.

Guardian's duty.  
1821, 51, § 51.  
18 Pick. 1.

SECT. 19. The guardian, appointed under the provisions of this chapter, shall manage the estate of his ward, frugally and without waste, and apply the income and profits thereof, so far as may be

necessary, for the comfortable and suitable maintenance of the ward and his family, if there be any ; and, if the income and profits be insufficient for that purpose, then from the principal ; and, whenever any exigency, by law authorizing a sale of any real estate of the ward, shall occur, the guardian shall apply to some proper court for a license to sell the same, and shall apply the proceeds to the purposes contemplated by his license.

SECT. 20. Every such guardian shall pay all just debts, due from the ward, out of his personal estate, so far as it may prove sufficient, without disposing of effects, necessary for the use and comfort of the ward and his family, if any; and, in case of deficiency thereof, then out of the real estate, as provided in chapter, one hundred and twelve.

From what funds debts may be paid. 1821, 51, § 51. 14 Mass. 207. 21 Pick. 36.

SECT. 21. Such guardian shall also settle all accounts of the ward, and demand, sue for, and receive all debts, due to him, or may, with the approbation of the judge of probate, compound for the same, and give a discharge to the debtor upon such terms, as the judge of probate may authorize ; and he shall appear for and represent his ward in all legal suits and proceedings, unless where another person is appointed for that purpose, as guardian or next friend.

Settlement of the ward's accounts. Guardian to appear for him in suits. 1821, 51, § 51.

SECT. 22. The guardian may join in, and assent to, a partition of the real estate of his ward, either upon a petition for partition or other legal process ; and he may assign and set out dower in the said estate, to any widow entitled thereto, and may appoint an appraiser of real estate on any execution, either against, or in favor of his ward.

Guardian's powers, in reference to real estate, in special cases. 2 Pick. 382.

SECT. 23. Any judge of probate, in his county, on the application of a guardian, or of any person interested in the estate of any ward, after notice to all other persons interested, may authorize or require the guardian, to sell or transfer any stock in the public funds, or other personal property, held by him as guardian, and to invest the proceeds of such sale, and also all other moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned ; and the judge may make such further order, and give such directions, as the case may require, for managing, investing, and disposing of the effects in the hands of the guardian, or for buying in any particular estate, or remainder, or reversion, or mortgage or other incumbrance, upon any real estate belonging to the ward.

Sales, and investments of funds, by order of the judge. 1821, 51, § 56.

SECT. 24. No married woman, during her coverture, shall be appointed guardian of any minor or other person ; and, if any female guardian be married after any such appointment, her authority, as such, shall cease ; neither shall her husband become guardian in her right.

Married women, not to be guardians, nor husbands, in right of wives. 1821, 51, § 54.

SECT. 25. The judge of probate may dismiss any guardian of a minor or other person, whenever it shall appear necessary, or on the request of such guardian, and, if the case require it, appoint another guardian in his place ; provided, that the judge, previously to any such removal, except by request of the guardian, shall give fourteen days notice to such guardian, to appear and shew cause to the contrary.

Of the removal of guardians. 1821, 51, § 55.

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Guardianship over female minors ceases, on marriage of wards.

Guardians to settle with judge, at least once in three years.  
1830, 470, § 10.  
7 Pick. 47.

Consequences of neglect of such duty.  
1830, 470, § 10.  
4 Mass. 106.  
1 Greenl. 186.

On settlement, bond to be examined.  
1830, 470, § 10.  
4 Mass. 106.

Accounts by two or more joint guardians.

Disabilities of persons over twenty one years of age, when under guardianship.  
1821, 51, § 51.  
12 Mass. 488.  
18 Pick. 115.

Guardianship of persons out of the state, granted in one county only, for the state.

Guardians appointed, and next friends allowed by courts in suits at law.  
3 Pick. 213,  
280.  
8 Pick. 552.

SECT. 26. On the marriage of any female ward, under the age of twenty one years, the authority of her guardian, as such, shall cease.

SECT. 27. Every guardian shall render and settle his account with the judge of probate, at least once in three years, and as much oftener, as the judge may cite him for that purpose.

SECT. 28. On neglect or refusal to settle his account, as aforesaid, such guardian shall be deemed to have broken the condition of his bond, and shall be liable to be removed therefor, notwithstanding the ward may be indebted to him; and he shall also forfeit all allowance for his personal service, unless it appear to the judge that such neglect arose from sickness or other unavoidable accident.

SECT. 29. On the settlement of every guardianship account except when intended, as a final one, the judge shall examine the bond of the guardian, and if it be found insufficient, either in amount or in the responsibility of the sureties, he shall require a new and sufficient one. Should such bond not be given, as required, the guardian shall be removed and a new one appointed in his place.

SECT. 30. When an account is rendered by two or more joint guardians, the judge of probate may, in his discretion, allow the same upon the oath of any one of them.

SECT. 31. Whenever a person above the age of twenty one years, for any cause specified in this chapter, shall have had a guardian appointed over him by any judge of probate, he shall be deemed incapable of disposing of his property otherwise than by his last will, or of making any contract, until otherwise adjudged by the court of probate, notwithstanding the death or resignation of the guardian; and in such case a new guardian may be appointed, without further intervention from the selectmen. Whenever, on application of any such person or otherwise, the judge shall find, that such guardian is no longer necessary, he shall order the property of the ward, remaining undisposed of, to be restored to him, excepting such legal compensation, as the guardian is authorized by law to receive for his services.

SECT. 32. The guardianship, which shall be first lawfully granted of any person, residing without the state, shall extend to all the estate of the ward within the same; and shall exclude the jurisdiction of the probate court in every other county.

SECT. 33. Nothing, contained in this chapter, shall impair or affect the power of any court of common law, probate court, or justice of the peace, to appoint a guardian to defend the interests of any minor, or other incapacitated person, in any suit pending in such court, nor their power to allow or appoint any person, as next friend of such minor or incapacitated person, to commence, prosecute, or defend any suit in his behalf.

## CHAPTER 111.

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## OF TESTAMENTARY TRUSTEES.

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| <p><b>SECT. 1.</b> Of the bonds required, and their condition.</p> <p><b>2.</b> When bonds may not be required. In such cases settlements to be annual.</p> <p><b>3.</b> Trustee neglecting to give bonds, considered, as declining the trust.</p> <p><b>4.</b> When a trustee may resign.</p> <p><b>5.</b> No person required to accept a trust, as executor, &amp;c. of a former trustee.</p> <p><b>6.</b> When a trustee may be removed.</p> <p><b>7.</b> When vacancies may be filled by the judge.</p> | <p><b>SECT. 8.</b> How the property shall vest in new trustees.</p> <p><b>9.</b> Judge may order conveyances.</p> <p><b>10.</b> Of bonds and inventory, as required by the judge.</p> <p><b>11.</b> Appraisal.</p> <p><b>12.</b> Courts may authorize the sale or investment of personal property, and the sale or purchase of real estate.</p> <p><b>13.</b> Chancery powers.</p> <p><b>14.</b> Bonds to be for the use of all parties interested.</p> |
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**SECTION 1.** Every person, who shall be appointed a trustee for minors or others, under any last will, excepting such as are exempted by the succeeding sections of this chapter, shall, before entering on the duties of his trust, give bond, with sufficient surety or sureties, to the judge of probate for the county in which the will shall have been proved, and in such sum as the judge shall prescribe, with condition as follows :

Of the bonds required, and their condition. 1821, 51, § 58. 22 Pick. 215.

*First.* That he will faithfully execute such trust, according to the will of the testator, so far as consistent with law ;

*Secondly.* That he will make a true and perfect inventory of the real estate, goods and chattels, rights and credits of such minors, or others, to be returned into the probate office of such county, at such time as the judge shall order ;

*Thirdly.* That he will render to such judge an account of the income and profits thereof, and of his payments and expenses, once in three years, and oftener, if thereto required by the judge ;

*Fourthly.* That, at the expiration of such trust, he will adjust and settle his accounts with the judge, and will pay and deliver over, all balances and sums of money or other property, that may be due, and give possession of the other estate belonging to such minors and others, with which he may have been entrusted, to the persons, entitled thereto.

**SECT. 2.** In the following cases, bonds shall not be required of such trustee, unless for special reasons the judge shall determine it to be necessary ; but all trustees, not required to give bond, shall settle their account with the judge of probate annually :

When bonds may not be required. 1821, 51, § 58. 9 Pick. 395. 22 Pick. 215.

*First.* When the testator shall have requested or directed, that such bond should not be required ;

In such cases, settlements to be annual.

*Secondly.* When all the parties interested in the trust fund, if of full age and legal capacity, shall, in writing, signify to the judge of probate their request, that such bond should not be required ;

*Thirdly.* When the trustee, not being before required to give bonds, shall have entered upon the duties of his trust, before the taking effect of the provisions of this chapter.

**SECT. 3.** Every person, appointed a trustee as aforesaid, who shall neglect to give such bond, within such time, as the judge of

Trustees neglecting to give bonds, considered, as declining.

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ing the trust.  
1821, 51, § 59.  
When a trustee  
may resign.  
1821, 51, § 60.

No person re-  
quired to ac-  
cept a trust as  
executor, &c.  
of a former  
trustee.

When a trustee  
may be remov-  
ed.  
1821, 59, § 62.

When vacan-  
cies may be fill-  
ed by the judge.  
1821, 59, § 61.  
12 Pick. 445.

How the prop-  
erty shall vest  
in new trustees.  
1821, 59, § 61.

Judge may or-  
der conveyan-  
ces.

Of bonds and  
inventory, as  
required by the  
judge.  
1821, 51, § 62.

Appraisal.

Courts may au-  
thorize the sale  
or investment  
of personal  
property, and  
the sale or pur-  
chase of real es-  
tate.

probate shall allow for that purpose, shall be considered, as having declined the trust.

SECT. 4. Every such trustee may, upon his own request, be allowed to resign his trust, when it shall appear, to the judge of probate, proper to allow the same.

SECT. 5. No person, succeeding to such trust, as executor or administrator of a former trustee, shall be required to accept or retain the same, against his will.

SECT. 6. When any trustee, appointed either by the testator or the judge of probate, shall become insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the judge may, upon notice to such trustee and all others interested, remove him, and appoint another in his stead.

SECT. 7. When any person, appointed a trustee, shall die, or resign the trust, or shall die, before the objects thereof are accomplished, if no adequate provision is made, by the will, for supplying such vacancy, the judge of probate shall, after notice to all persons interested, appoint a new trustee, to act, alone, or jointly with others, as the case may be.

SECT. 8. Every trustee, appointed by the judge of probate under the provisions of this chapter, shall have and exercise the same powers, rights and duties, whether as a sole or joint trustee, as if he had been originally appointed by the testator; and the trust estate shall vest in him, in like manner, as it did or would have vested in the trustee, in whose place he is substituted.

SECT. 9. The judge may order such conveyances to be made by the former trustee or his representatives, or by the other remaining trustees, as may be proper, to vest in the trustee, newly appointed, either alone, or jointly with others, the estate and effects as the case may be.

SECT. 10. Every trustee, appointed by the judge of probate shall, before entering upon the duties of his trust, give bond, in the manner prescribed in the first section; excepting only, that the judge may dispense with the making and returning of an inventory by any substituted trustee, whenever he shall think such inventory unnecessary; in which case, the condition of the bond shall be altered accordingly. Without the acceptance of such bond by the judge, no right nor authority shall vest in the said trustee.

SECT. 11. In all cases, when an inventory is required to be returned by any trustee, the estate and effects shall be appraised by three suitable persons, to be appointed and sworn, as is prescribed by law, with respect to the estate of a deceased testator or intestate.

SECT. 12. The judges of probate, having jurisdiction of the trust, in their respective counties, and also the supreme judicial court in any county, may, on the application of the trustee, or of any person interested in the trust estate, after notice to all other persons interested therein, authorize or require the trustee to sell any stock in the public funds, or in any corporation, or any other personal estate or effects, held by him in trust; and to invest the proceeds of such sale, and also any other trust moneys in his hands, in any estate, or in any other manner, that shall be most for the interest

concerned therein; they may also authorize the sale of real estate, held as aforesaid, and give such further directions, as the court may require, for managing, investing and disposing of the trust fund, subject to any provisions contained in the will, respecting the fund; and provided, this section shall not restrain the exercise of any powers, given by the terms of the will.

SECT. 13. The said courts, respectively, may hear and determine, in equity, all other matters relating to the trusts mentioned in this chapter. Chancery powers.

SECT. 14. Any bond, given by a trustee, as provided in this chapter, may be put in suit by order of the judge of probate, for the use and benefit of any person interested in the trust estate; and proceedings in such suit shall be conducted in the manner prescribed in chapter, one hundred and thirteen, with respect to bonds given by administrators. Bonds to be for the use of all parties interested.

## CHAPTER 112.

### SALES OF REAL ESTATE BY EXECUTORS, ADMINISTRATORS, GUARDIANS, AND OTHERS, UNDER SPECIAL LICENSE OF COURT.

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| <p>SECT. 1. When the judges of probate may license sales of real estate.</p> <p>2. Sales to be by auction, unless otherwise ordered.</p> <p>3. Appeals allowed, on such applications.</p> <p>4. Concurrent jurisdiction of supreme judicial, and district court.</p> <p>5. Bonds required.</p> <p>6. Oath.</p> <p>7. Notice previous to granting license.</p> <p>8. Effect of a bond of indemnity by parties interested in the estate.</p> <p>9. Of the notice of sale.</p> <p>10. Certificates of judge of probate necessary in certain cases, on application to the supreme judicial, or district court.</p> <p>11. Petitioner and others may be examined under oath.</p> <p>12. When certificates of the overseers of the poor, necessary.</p> <p>13, 14. Proceedings for sale of estate of persons deceased, or wards, not resident in the state.</p> <p>15. Evidence of appointment of an executor, administrator or guardian, in another state.</p> <p>16. Sales may be adjourned, not exceeding fourteen days.</p> <p>17. Licenses, in force, one year only.</p> <p>18. Limitation of action, or entry, to recover back lands sold under license, &amp;c.</p> | <p>SECT. 19. Evidence of notice of sale, how perpetuated.</p> <p>20. Licenses to sell real estate, at private sale.</p> <p>21. Oath and bond in such cases.</p> <p>22. License, in reference to a particular offer to purchase.</p> <p>23. Jurisdiction of lands in one county, to embrace lands in other counties.</p> <p>24. License to sell, at private sale, to authorize a sale by auction.</p> <p>25. Wife of a ward insane, &amp;c. may join in a sale with his guardian to convey estate, held in her right.</p> <p>26. May also bar her dower in his lands.</p> <p>27. Guardian may contract with her, to invest proceeds of her interest, with the judge's consent.</p> <p>28. Judge of probate to authorize deeds, under contract of a person deceased.</p> <p>29. Licenses, in certain cases, may express what, and in what order, lands may be sold.</p> <p>30. Operation of the deed of a person, authorized by license.</p> <p>31. What estate of deceased persons is subject to be sold by license.</p> <p>32. Surplus proceeds of sale considered as real estate, for purposes of distribution.</p> |
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<p><b>CHAP. 112.</b> SECT. 33. Presumptive heirs of wards, entitled to notice, as parties interested.</p> <p>34. Of costs, when the granting of a license is objected to.</p> <p>35. Requisites of a valid sale, against persons claiming under the deceased, &amp;c.</p>	<p>SECT. 36. Against such as claim adverse the title sold.</p> <p>37. Remedy on bond, or otherwise party aggrieved by misconduct the person licensed.</p> <p>38. Certain interests in lands, in ed in the construction of chapter.</p>
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When judges of probate may license sales of real estate.  
 1821, 51, § 68.  
 12 Mass. 503.  
 15 Mass. 58.  
 8 Greenl. 220.  
 15 Pick. 423.  
 1821, 52, § 2, 5, 6.

**SECTION 1.** Judges of probate, in their respective counties, s have power to license the sale of real estate, and certain inter therein, in whatever county the same may be situated, in the following cases, on application :

*First.* Of executors, administrators, and guardians of mi and other incapacitated persons, to authorize them to sell so m of the real estate of their testators, intestates and wards, res; tively, as is necessary for the payment of just debts and lega and incidental expenses of sale, and charges of administratio guardianship ; and when there is not sufficient personal estate the support of such wards ;

*Secondly.* Of such executors, administrators and guardians like cases, to sell so much real estate, held in mortgage, and sei and possession thereof being had for breach of the condition ther or which has been set off on execution to such executor, admir trator or the ward of such guardian, as may be necessary for \$ objects, notwithstanding the right of redeeming the same may i have been foreclosed ;

*Thirdly.* Of guardians of minors, and other incapacitat persons, so much as is necessary for the payment of debts a expenses of guardianship, and incidental charges, notwithstandi there may be a reserve of personal property of the wards ; provide that it appear more for the advantage of such wards, or their fa ilies ;

*Fourthly.* Of guardians, in addition to the provisions of t preceding specifications, to sell so much of the real estate of the wards, as will raise not exceeding one hundred dollars more, anticipation of accruing expenses ;

*Fifthly.* Of executors, administrators and guardians, as afor said, when license might be granted for any of the foregoing pu poses, and it should appear by the petition, and proof exhibited i support of the same, that, by a partial sale of any entire portio the residue would be greatly depreciated, to authorize the sale o the whole, or such entire parts thereof, as will not injure the residu

*Sixthly.* Of the friends or guardians of minors and other inca pacitated persons, that the guardians, or some other suitable person may be authorized to sell any real estate of the wards, includin lands held in mortgage or levied upon by execution, when it full appears, that it would be for the benefit of the wards, that the sam should be disposed of, and the proceeds thereof put out at interest though not requisite for other purposes ;

*Seventhly.* Of friends or guardians of minors, and others unde guardianship, who are owners of lands, on which any trees or tim ber shall be standing, and it shall be made to appear, that the inter ests of the wards would be promoted by having the trees or timber

1833, 76.

sold, and the proceeds thereof put on interest, to authorize the guardian of any such minor, or other suitable person, to sell said trees and timber, or any part thereof, for the purpose aforesaid ;

*Eighthly.* Of any husband, resident in the county of such judge, whose wife is insane, that he may be authorized, on such terms and conditions, as the judge may think proper to require, to make sale, for a valuable and sufficient consideration, of any real estate held by him in right of his wife ;

*Ninthly.* Of public administrators in the case defined in section eleven, of chapter, one hundred and seven :

Provided, that the executor, administrator or guardian shall have received his appointment, as such, from the judge granting the license, or from his predecessor.

SECT. 2. Excepting where otherwise specially authorized, as hereinafter provided, all the sales under the provisions of the preceding section, shall be by public auction.

SECT. 3. An appeal shall be allowed from any order, decree, denial or decision of any judge of probate, respecting any petition for such license, in like manner as in other cases.

SECT. 4. The supreme judicial court in every county, and any district court in any county within its district, shall have original, concurrent jurisdiction with the court of probate in all cases, specified in the first section of this chapter ; and the right and conditions of appeal may be exercised and applied from the district courts to the supreme judicial court, as may be from the probate court.

SECT. 5. Executors, administrators and guardians, in all cases of license obtained to sell real estate, shall, before proceeding to make such sale, give bond to the judge of probate of the county, in which they were originally appointed, respectively, in an amount and with sureties, to his satisfaction, with the following conditions :

*First.* That they shall observe all the provisions of law for the sale of real estate by executors, administrators and guardians, and use due diligence in executing the trust ; and

*Secondly.* That the proceeds of the sale shall be truly applied and accounted for, according to law.

SECT. 6. Before fixing upon the time and place of sale, they shall make oath, that, in the execution of the trust, they will act faithfully and impartially, according to their best skill and judgment ; which oath shall be taken before the judge of probate, in whose county they were originally appointed, or before some justice of the peace, whose certificate shall be returned to the said judge, and the same shall be filed and recorded by the register.

SECT. 7. No license shall be granted for the sale of any such real estate by any court, to any executor, administrator, guardian or other person, as aforesaid, until after at least fourteen days previous personal notice, or notice given three weeks successively in such newspaper, as the court shall order, to all persons interested in the property, of the time and place of hearing, that they may appear and object if they see cause. If any party interested reside without the state, such special notice may be given, as the court may direct.

SECT. 8. Such license shall not be granted to any executor,

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1835, 160, § 1.

1835, 153, § 3.

Sales to be by auction, unless otherwise ordered.

1821, 52, § 3.

Appeals allowed, on such applications.

1821, 51, § 68.

8 Greenl. 220.

Concurrent jurisdiction of supreme judicial, and district court.

1821, 52, § 3, 5, 6.

15 Mass. 58.

8 Greenl. 220.

Bonds required.

1821, 52, § 3, 7.

1830, 470, § 6.

1833, 62, § 1.

1833, 76.

1837, 296.

3 Greenl. 222.

Oath.

1821, 51, § 69.

7 Pick. 111.

Notice previous to granting license.

1821, 52, § 2.

Effect of a bond

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of indemnity, by parties interested in the estate. 1821, 52, § 2. 13 Mass. 162.

administrator or guardian, if any of the parties, interested in the estate of the person deceased or under guardianship, shall give bond to the said executor, administrator or guardian, in a sum and with sureties to be approved by the court, conditioned to pay all sums, for the payment of which license might otherwise be granted under the petition, so far as the goods and chattels, rights and credits of the person deceased, or under guardianship shall be insufficient therefor; provided, that such bond shall be no bar to any future application for the same purposes, if the obligors, on reasonable notice and demand, shall, at any time, fail to perform the condition thereof.

Of the notice of sale. 1821, 52, § 2. 1 Mass. 247. 3 Mass. 399. 15 Mass. 326. 16 Mass. 129.

SECT. 9. Every person, licensed, as aforesaid, to sell the estate of any person deceased or under guardianship, shall, previous to such sale, give thirty days notice thereof by posting up notification in some public place in the town, where the estate lies, and in two adjoining towns, and in the town, where the said deceased last dwelt, or where the person under guardianship resides, if within the state; or by causing an advertisement thereof to be published, three weeks successively, in such newspaper as the court, who may authorize the sale, shall order; the first publication being thirty days before the sale.

Certificate of judge of probate necessary in certain cases, on application to the supreme judicial, or district court. 1821, 52, § 4, 7.

SECT. 10. Every application for the sale of any estate, under the provisions of the fifth specification of the first section of this chapter, when made to the supreme judicial court, or to any district court, shall be accompanied by a certificate from the judge of probate of the county where such estate was inventoried, showing the value of the real and personal estate of the person deceased or under guardianship, and the amount of his just debts, or legacies, if the case require it; and also the opinion of such judge of probate, whether it be necessary that the whole or a part of the estate should be sold, and, if part only, what part; and in all applications before said courts by guardians of minor children, under the sixth specification aforesaid, a certificate must likewise be produced from the judge of probate in the county where such minor's estate was inventoried, stating that, in his opinion, it would be for the interest of such minor, that the whole or a part of his said estate should be sold for the purpose specified, and if part only, what part.

Petitioner and others may be examined under oath. 1821, 52, § 4.

SECT. 11. Any court, authorized to grant licenses under the provisions of this chapter, may examine under oath the petitioner or any other persons, whether interested or not, touching the truth of the facts set forth in any such petition.

When certificate of the overseers of the poor, necessary. 1821, 52, § 5, 6.

SECT. 12. No license to sell the estate of any person under guardianship, not a minor or insane person, shall be granted, unless the guardian, or other person applying, shall produce to the court a certificate under the hands of the overseers of the poor of the town, where the ward resides, if within this state, giving their consent and approbation of the sale, and their opinion as to the amount proposed to be raised by such sale, excluding debts contracted by gaming; and, if applicable to the case, whether it be necessary to sell a greater amount in value of land to prevent injury to the residue.

Proceedings for sale of estate of persons deceased.

SECT. 13. The supreme judicial court, and any district court, in any county within the limits of their respective jurisdictions, may

grant license to executors and administrators on the estates of persons deceased, who, at the time of their decease, resided out of the state, and also guardians of such minors and other persons under guardianship, not living within the state, producing evidence of their appointment as hereinafter provided, to sell and convey such real estate or interest therein, lying within the state, in the same way and manner, and under the same regulations, as are provided, in this chapter, for the sale of such estate by executors, administrators and guardians, appointed under authority of this state.

SECT. 14. All proceedings, necessary to be had before any judge of probate within this state, respecting such sale as is provided in the preceding section, shall be had before the judge of probate within and for the county, where such real estate lies, and the bond required of the person licensed shall be given to the same judge. No certificate in such case shall be required of the overseers of the poor in any place.

SECT. 15. Whenever any executor, administrator or guardian has been duly approved or appointed by any court, having probate jurisdiction in any other of the United States, a certified copy of such approval and appointment, submitted for examination to any judge of probate in this state, and by him allowed and ordered to be filed, and transcribed upon the records in the registry of probate for his county, shall be sufficient authority to entitle such executor, administrator or guardian to all the rights and powers of such appointment, so far as affected by the provisions of the thirteenth section of this chapter.

SECT. 16. Any sale, appointed and notified under the provisions of this chapter, may be adjourned for a time or times, not exceeding fourteen days in the whole, at the discretion of the person licensed, he giving such reasonable notice of such adjournment, as circumstances may permit.

SECT. 17. No license, granted under any of the provisions of this chapter, shall remain in force longer than one year from its date.

SECT. 18. No action for the recovery of any estate, sold under the provisions of this chapter by an executor, administrator or guardian, shall be maintained by any heir, or other person claiming under the deceased testator or intestate, unless it be commenced within five years next after the sale; and no action for any estate, sold in like manner by a guardian, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship; excepting only, that persons out of the state, and minors and others, under any legal disability to sue at the time when the action shall first accrue, may commence such action, at any time within five years after the removal of the disability, or their return to the state; and no entry shall be made, unless by judgment of law, upon any lands, sold as aforesaid, with a view to avoid the sale, unless within the times of limitations before prescribed for the commencement of an action.

SECT. 19. The affidavit of any person, duly licensed to make sale of any real estate, or of any person, employed by such licensed

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ed, or of wards not resident in the state. 1821, 52, § 8. 2 Fairf. 99.

Same subject. 1821, 52, § 8, 9.

Evidence of appointment of an executor, administrator or guardian, in another state. 1821, 52, § 10.

Sales may be adjourned, not exceeding fourteen days. 1821, 52, § 11. 15 Mass. 175.

License, in force, one year only. 1821, 52, § 12. 15 Mass. 326. 9 Pick. 285.

Limitation of action, or entry to recover back lands sold under license, &c. 1821, 52, § 12. 14 Maine, 344.

Evidence of notice of sale, how perpetrated. 1821, 52, § 15.

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person, taken within eighteen months next following the sale of such real estate, and filed in the probate court, and recorded with one of the original advertisements of the time, place and estate to be sold, or a copy of such advertisement, is hereby declared to be one mode of perpetuating the evidence, that such notice was given; and a copy of such affidavit, certified by the register of probate, shall be competent evidence thereof; or the affidavit may be taken, as provided in section, twenty three, of chapter one hundred and five.

Licenses to sell real estate, at private sale. 1826, 342. 1830, 470, § 4. 5 Greenl. 240.

SECT. 20. In all cases, where the supreme judicial court, an district court, or any judge of probate, may, by the provisions of this chapter, license any person to sell any real estate by auction, the said courts, respectively, may authorize *them* [him] to make sales, from time to time, at private sale, if it shall appear for the interest of all concerned.

Oath and bond in such cases.

SECT. 21. Every person, thus licensed, shall be required to take the same oath, and execute and file with the judge of probate like bonds, as is required of persons licensed to sell by auction; but the notice to be given of the time and place of sale, shall be such as the court, in their license, may direct, excepting as directed in the following section.

License, in reference to a particular offer to purchase.

SECT. 22. Whenever, on such application to sell estate at private sale, it appears by the petition of any executor, administrator or guardian, and the evidence adduced, that an advantageous offer has been previously made to him, by any person, for such estate, or any part of the same, and that the interest of all persons concerned will be best promoted by an immediate acceptance of the same, the said courts, or the judge of probate having cognizance of such petition, may authorize a sale of the property on such terms as they see fit, to such individual, with or without public notice, at the discretion of the person licensed; the person licensed giving bonds and taking the oath, as in other cases.

Jurisdiction of lands in one county, to embrace lands in other counties. 1826, 342.

SECT. 23. When the real estate, for the sale of which license may be necessary, lies in two or more counties, the judge of probate or other court, having authority to grant license to sell the estate in either of said counties, may also include in such license, the whole or any part of the estate in any of the other counties in the state, which might be liable to be sold for the same objects, if the court had regular jurisdiction of the same.

License to sell, at private sale, to authorize a sale by auction.

SECT. 24. Any person, duly authorized to sell real estate at private sale, may, notwithstanding, if he see cause, sell the premises by auction, at any time within the term of his license, he complying with all the requisitions of law for sales by auction, together with any particular conditions contained in his aforesaid license.

Wife of a ward insane, &c. may join in a sale, with his guardian to convey estate, held in her right. 1823, 380, § 3.

SECT. 25. Whenever the guardian of any insane or other person, not a minor, shall have obtained license, from any court empowered to grant the same, to sell the interest of his ward in any estate, held by him in right of his wife, it shall be lawful for her to join with such guardian in the sale and conveyance thereof; and any deed, executed by her with the said guardian, for a sufficient consideration, shall be as effectual, as if executed by her with her husband, when under no legal disability.

May also bar

SECT. 26. Whenever any guardian as aforesaid shall have

obtained license to sell the real estate of his ward, and the wife of such ward shall release her contingent right of dower therein to the purchaser, either in the same deed with the guardian, or another deed duly acknowledged and recorded, she shall be forever barred from claiming any dower in the premises.

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her dower in his lands.  
1828, 380, § 4.

SECT. 27. It shall be competent for the guardian, with the consent of the judge of probate, to whom he is accountable, to make any agreement in writing with such wife, as to the investment or other disposal of such part of the proceeds of sale of the whole property for her separate use, as may be equivalent to her interest in the same; and the said judge of probate, or the supreme judicial court, shall have power to enforce such agreement, as a subject of trust, upon principles of equity.

Guardian may contract with her, to invest proceeds of her interest, with the judge's consent.  
1828, 380, § 3.

SECT. 28. Judges of probate may authorize any executor or administrator of any deceased person, whose estate is subject to his jurisdiction, to execute deeds, in order to carry into effect bonds, agreements or covenants in writing, whether sealed or not, whenever it shall be made to appear to them, on petition of the person contracted with, as aforesaid, or his heirs or assigns, or personal representatives, that the deceased, in his life time, entered into any such contract to convey real estate to him, but was prevented by death; and that the petitioner has performed, or stands ready to perform, whatever condition was required of him by the terms of the contract. And, whenever any executor or administrator shall receive any such conveyance, he shall stand seized of such estate, to the same uses and for the same purposes, as he may be of real estate, set off to him on execution.

Judge of probate to authorize deeds, under contract of a person deceased.  
1839, 361.  
1840, 21, § 1.  
3 Greenl. 50.  
14 Pick. 271.

SECT. 29. On granting license to any executor, administrator or guardian, for the payment of debts, legacies or expenses of administration, it shall be competent for the court granting the same, to prescribe in the license, what particular portions of the real estate shall be sold, and in what order, agreeably to the provisions of the last will of the testator, or on such principles of equity, as they may find applicable.

Licenses, in certain cases, may express what, and in what order, lands may be sold.  
6 Mass. 149.  
8 Pick. 478.

SECT. 30. Any deed, made, executed and recorded in due form of law, for a fair and adequate consideration, in pursuance of any license under the provisions of this chapter, shall be effectual to pass to the purchaser all the estate, right, title and interest in and to the granted premises, which the testator or intestate, at the time of his death, or the person under guardianship, or other person on account of whom the license was granted, might convey by a like deed, if living and not incapacitated.

Operation of the deed of a person, authorized by license.  
1821, 52, § 2.  
3 Greenl. 282.  
4 Greenl. 1.  
4 Pick. 312.

SECT. 31. Lands, of which the testator or intestate died seized in fee simple, or in fee tail, general or special, and also all such estate, as he had fraudulently conveyed, or of which he had been colorably disseized with intent to defraud his creditors, shall be liable to be sold under any license for the payment of his debts, under the provisions of this chapter.

What estate of deceased persons is subject to be sold by license.  
1821, 52, § 1.  
14 Mass. 137.  
15 Mass. 148.

SECT. 32. In all cases of sales by an executor, administrator, husband or guardian, of any part or the whole of the real estate of his testator, intestate, wife or ward, under a license granted by any court, by virtue of the provisions of this chapter, whether such

Surplus proceeds of sale, considered as real estate, for purposes of distribution.

**CHAP. 112.** executor, administrator or guardian shall have been appointed this state or elsewhere, and wherever the husband may reside, surplus of the proceeds of the sale, remaining on the final settlement of the accounts of such proceeds, shall be considered, as real estate, and be disposed of amongst the same persons, and in the same proportions, as the real estate would have been, by the law of this state, if it had been sold.

15 Maine, 207,  
212.  
9 Pick. 130.

Presumptive heirs of wards, entitled to notice, as parties interested.  
3 Mass. 398.

Of costs, when the granting of a license is objected to.  
1821, 52, § 14.

Requisites of a valid sale, against persons claiming under the deceased, &c.  
7 Mass. 438.  
7 Pick. 1.

Against such as claim adversely to the title sold.  
2 Fairf. 174.  
5 Pick. 519.

Remedy on bond, or otherwise, to party aggrieved by misconduct of the person licensed.  
5 Pick. 519.

Certain interests in lands included in the construction of this chapter.

**SECT. 33.** All those, who are next of kin, and heirs apparent or presumptive of the ward, shall be considered as interested in the estate, and may appear, as such, and answer to the petition of a guardian or other person for the sale of his estate; and, when personal notice is required to be given, they shall be notified, as such.

**SECT. 34.** If any person interested shall appear and object to the granting of any license, prayed for under the provisions of this chapter, and if it shall appear to the court, that either the petition or the objection thereto, is unreasonable, they may, in their discretion, award costs to the party prevailing.

**SECT. 35.** In case of an action, relating to any estate sold under the provisions of this chapter, in which an heir, or other person claiming under the deceased, or the wife or her heirs, in case of the sale of her estate by her husband, or the ward or any person claiming under him, shall contest the validity of the sale, it shall not be avoided on account of any irregularity in the proceedings, provided it shall appear:

*First.* That the license was granted by a court of competent jurisdiction, and that the deed was duly executed and recorded;

*Secondly.* That the person licensed gave whatever bond was required in his case;

*Thirdly.* That he took the oath prescribed in section, six, of this chapter, if also required;

*Fourthly.* That he gave notice of the time and place of sale as prescribed in this chapter;

*Fifthly.* That the premises were sold in such manner, as within such term, as the license authorized, and are held by one who purchased them in good faith.

**SECT. 36.** If the validity of any such sale shall be drawn in question, by any person claiming adversely to the title of the deceased testator or intestate, ward, or wife aforesaid, or by a title not derived through him or her, the sale shall not be held void on account of any irregularity in the proceedings; provided, it shall appear that the license was granted by a court of competent jurisdiction, and that the deed was duly executed and recorded.

**SECT. 37.** If, in relation to such sale, there shall be any neglect or misconduct in the proceedings of any executor, administrator or guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover compensation therefor, in a suit on the probate bond, or otherwise, as the case may authorize or require.

**SECT. 38.** Whenever executors, administrators or guardians, may be authorized to sell property held in mortgage, or levied upon by execution, as in the second specification in the first section of this chapter, or to sell trees and timber, standing on any land of

any minor, as in the seventh specification in said section, all the provisions in this chapter, respecting the sale of real estate after license obtained, which may be applicable to the case, shall be construed, as including the same. CHAP. 112.

## CHAPTER 113.

### GENERAL PROVISIONS, RESPECTING PROBATE BONDS, AND REMEDIES ON THE SAME.

- SECT. 1.** When sureties are insufficient, judge to require new bonds.
- 2, 3.** Of applications by sureties to be discharged, after six years.
- 4.** Suits to be brought in name of the judge, &c. in the supreme judicial court for same county. Survivorship, &c.
- 5.** As of right, by any persons interested.
- 6.** Manner of inserting their names in the writ.
- 7.** Of costs in such cases.
- 8.** Principal obligor may be made a defendant, on motion of surety, if omitted.
- 9.** How he may be summoned, and the effect thereof.
- 10.** What evidence a creditor of an insolvent estate must produce.

- SECT. 11.** A creditor of a solvent estate, &c. or a legatee.
- 12.** Evidence required of widows, next of kin, and residuary legatees.
- 13, 14, 15.** Of judgment, and proceedings thereon.
- 16.** How execution to be awarded, for not rendering an account.
- 17.** For not returning inventory, or other neglect or mismanagement.
- 18.** Of suits by the judge, for all concerned, and the incidents thereof.
- 19.** Provisions of this chapter to be applied to other probate bonds, as well as of administrators.
- 20.** Sureties discharged from future liabilities on bonds, on request of the principal, stating that their testimony is required in a case, wherein he is a party in his official capacity.

**SECTION 1.** Whenever the sureties in any bond, given to the judge of probate, shall be insufficient, the judge of probate, on the petition of any person interested, and after notice to the principal in the bond, may require a new bond to be given, with such sureties as he shall judge sufficient.

When sureties are insufficient, judge to require new bonds. 1821, 51, § 63.

**SECT. 2.** Any surety, in a bond given to the judge of probate, may, at any time, after the expiration of six years from the date of the bond, on his application, be discharged from all responsibility, for any subsequent breach of the condition of such bond, but for no prior breach; if the judge, on due notice to all persons interested, shall think proper to discharge him: and the principal shall thereupon give a new bond, with such sureties, as the judge shall approve.

Of applications by sureties to be discharged, after six years. 1821, 51, § 63.

**SECT. 3.** In the cases specified in the preceding sections, if the principal shall not give such new bond, within such time, as the judge shall order, he shall be removed from his trust, and some other person shall be appointed in his place.

Same subject. 1821, 51, § 63.

**SECT. 4.** All suits, brought upon a probate bond of any kind, payable to any judge of probate, shall be originally commenced in the supreme judicial court, held within and for the county, in which the said judge of probate shall belong, in the name of said judge,

Suits to be brought in name of the judge, &c. in supreme judicial court for same coun-



**CHAP. 113.** or his successor for the time being, as the case may be. And such suit shall not abate by the death, resignation, or expiration of the term of office, of the judge, in whose name the suit may be brought, but, upon the appointment of a successor, the process may be amended and prosecuted in the name of such successor, without notice.

ty. Survivorship, &c. 1821, 51, § 70. 14 Mass. 451.

As of right, by any persons interested. 1830, 470, § 1. 3 Fairf. 55. 5 Pick. 62, 398. 13 Pick. 152.

Manner of inserting their names in the writ. 1830, 470, § 1. 2 Greenl. 239. 10 Pick. 75.

Of costs in such cases. 1830, 470, § 1. 8 Mass. 438. 5 Pick. 62.

Principal obligor may be made a defendant, on motion of surety, if omitted. 1821, 51, § 71.

How he may be summoned, and the effect thereof. 1821, 51, § 71.

What evidence a creditor of an insolvent estate must produce. 1821, 51, § 72. 21 Pick. 68.

**SECT. 5.** Any person interested, either personally or in an official capacity, in any probate bond, or in any judgment, that may have been rendered on such bond, shall have a right to originate a suit on such bond, or to sue out a scire facias on said judgment, as the case may require, without applying to the judge, whose name may have been used in said bond, or in such judgment, or his successor; and any two or more parties, interested in the penalty of such bond, may unite in the prosecution of the action.

**SECT. 6.** The person, by whom the said action shall be brought or his attorney or other person in his behalf, shall allege, in the original writ or scire facias, his own name and addition, and that the same is sued out by him, "in the name of ———, judge of probate for the county of ———;" otherwise the writ shall abate.

**SECT. 7.** If such suit is not sustained, the court before which the same is pending, shall render judgment and issue execution for costs, against the person instituting the suit; but no judgment shall be rendered against the judge of probate; provided, that this and the two preceding sections shall not be construed, as applicable to suits on such bonds, when commenced by the express authority of the judge of probate.

**SECT. 8.** If the principal in any such bond shall be resident within this state, at the commencement of the action on such bond, and shall not be made a defendant therein, and served with process accordingly, or if, at the time of the hearing of the parties in such action, or on a scire facias on a judgment recovered against his sureties only, on such bond, he shall be within the state, the court may, at the request of any such surety, continue or postpone the action, so long as may be necessary to summon or bring in the principal, in the manner, provided in the next section.

**SECT. 9.** The surety may thereupon take out a writ, in such form as the court shall prescribe, to arrest the principal, if liable to arrest, or to attach his goods or estate, and summon him to appear and answer, as a defendant in the original action; and if, after being duly served with such process, fourteen days at least before the time appointed for him to appear and answer to the suit, he shall neglect so to do, and if the judgment shall be for the plaintiff, it shall be rendered against such principal obligor, together with the other defendants, in the same manner, as if he had been originally a party to the suit; and any attachment made, or bail taken, on such process, shall be liable to respond the judgment, in like manner, as if made or taken in the original suit.

**SECT. 10.** Every creditor, entitled to a dividend from an insolvent estate, on prosecuting an original suit against the administrator or executor on any probate bond, or suing out a scire facias on any judgment, previously recovered on the same, must produce an official copy of the order of distribution of the estate of the deceased

among the creditors, particularly specifying all the claims allowed to several creditors; and prove, that a demand has been made on the administrator, for his particular dividend.

**SECT. 11.** If the estate be not insolvent, or if the claim be of a nature not affected by such insolvency, such creditor must first have the debt or damages ascertained by judgment of court, against the executor or administrator, whose bond is sued; and make it appear, that a demand has been made of such executor or administrator therefor; and that he has refused or neglected to satisfy the same, to show goods or personal estate of the deceased, for that purpose. Any person claiming a legacy, under the will of the deceased, other than a residuary legatee, must also have the amount due him, ascertained by judgment of court, and prove such demand on the executor or administrator with the will annexed, as is required in the case of a creditor.

**SECT. 12.** Any widow, to whom an allowance has been made by the judge of probate, or any widow, or next of kin, entitled to a distributive share in the personal estate, or any residuary legatee of any deceased person, before being entitled to recover in any such case, upon the bond of any executor or administrator, or on any writ facias as aforesaid, must produce a decree of the judge of probate, ascertaining the amount due, and prove such a demand and refusal by the principal in such bond, as is required in the preceding section.

**SECT. 13.** Whenever, in any original suit brought on any probate bond, it shall appear by verdict, default, confession or otherwise, that the condition of any probate bond has been broken, judgment shall be entered in the common form for the penalty, and the subsequent proceedings shall be had by the court, as hereinafter provided.

**SECT. 14.** Whenever it shall appear, for whose use the money recovered shall enure, and that such person's claim has been ascertained, pursuant to sections ten, eleven and twelve, of this chapter, the court shall order, that the judge of probate, in whose case the action is brought, shall then have execution for any part of the penalty, equal to the principal and interest appearing to be due to the person, for whose use the suit may have been brought, with legal costs; and, when there are several persons, to whose use the money recovered is to enure, there shall be as many separate executions in the same form; and the costs shall be apportioned under the direction of the court.

**SECT. 15.** The person or persons, to whose use execution shall have been awarded, shall have the same levied in their own names, respectively, on real estate or otherwise, and shall be deemed the creditors to all intents.

**SECT. 16.** Whenever, in any such suit, against any administrator, it shall appear that he has neglected or refused to account, upon oath, for such property of the intestate, as he has received, after he has been cited by the judge of probate for that purpose, execution shall be awarded against him, for the full value of whatever personal property of the deceased has come to his hands, without any discount, abatement, or allowance for charges of administration or debts paid.

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A creditor of a solvent estate, &c. or a legatee. 1821, 51, § 72. 20 Pick. 53.

Evidence required of widows, next of kin, and residuary legatees. 16 Mass. 524.

Of judgment, and proceedings thereon.

Same subject. 1821, 51, § 73.

Same subject. 1821, 51, § 73.

How execution to be awarded for not rendering an account. 1821, 51, § 72. 16 Mass. 129. 1 Greenl. 139. 7 Greenl. 302.

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For not returning inventory, or other neglect or mismanagement.

1821, 51, § 72.

4 Greenl. 154.

1 Fairf. 53.

2 Fairf. 157.

Of suits by the judge, for all concerned, and the incidents thereof.

4 Mass. 318.

5 Pick. 61.

**SECT. 17.** Where any administrator shall have received property of an intestate, and shall not have exhibited, under a particular inventory thereof, and in all other cases of mismanagement, execution shall be awarded against him for the part of the penalty of his bond, as may be adjudged on a course of law.

**SECT. 18.** All monies recovered on any judgment, or issued as aforesaid, excepting as provided in section 17 of this chapter, shall be recovered by the judge of probate for all parties interested in the penalty of the bond; and shall require any administrator or executor, against whom the same shall have been recovered, to account for the same; and the administrator or executor shall still retain the administration estate, on account of which the bond was given: and in all such cases, the judge shall assign such judgment and execution to the rightful executor or administrator, to be collected, and the proceeds thereof shall be accounted for and distributed, or otherwise disposed of, as assets.

**SECT. 19.** When not otherwise expressly provided by the proceedings, judgment and execution, so far as applicable, shall be had upon the bonds given to any judge of probate by special administrators, guardians, testamentary trustees, partners, or others, as is provided in this chapter, in relation to the bonds of administrators in common cases.

**SECT. 20.** The judges of probate, within their respective jurisdictions, upon a written application to them by any executor, administrator, guardian or testamentary trustee, setting forth that the surety on his bond is needed as a witness in a case, where his official capacity, is a party, are authorized, upon satisfaction of the statement in such application, to make a decree that the surety shall not be liable on the said bond, after the date of the decree, on account of any default of the principal, or any action on such bond against the principal, which may be brought subsequently to the date of said decree; and that such administrator, guardian, or trustee file a new bond for the benefit of the principal in his official capacity: such decree shall be recorded, and shall operate, as a discharge of such surety liabilities on said bond, which may accrue, subsequently to the date of said decree; and a certified copy of such decree shall be conclusive evidence, that the liability of such surety has ceased.

Provisions of this chapter applied to all probate bonds.

1821, 51, § 72, 74.

Sureties discharged from future liabilities on bonds, on request of their principal, stating that their testimony is required in a case, wherein he is a party in his official capacity.

## TITLE TENTH.

### Of civil actions, their various forms, limitations and proceedings, and evidence therein.

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### CHAPTER 114.

#### THE COMMENCEMENT OF CIVIL ACTIONS; INDORSEMENT AND SERVICE OF WRITS; ATTACHMENT OF PROPERTY; ARREST AND TAKING BAIL.

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56. Mode of appraisal.
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61. Priority of executions.
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- 72. Sale of property attached, when claimed by a third person.
- 73. Attachment of certain other interests in real estate.
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- 75. Same, in case of several defendants.
- 76. Service of writ, in such cross actions.
- 77. Disposal of goods attached by an officer, in case of his death.
- 78. How far goods, taken from an officer by replevin, are to be considered in his possession.
- 79. Liability of the plaintiff in replevin on the bond, in case of judgment for a return.
- 80. In case an officer dies, having goods under attachment, they are liable to be further attached.
- 81. Notice how given, of such subsequent attachment.
- 82. Limitation of the right to attach goods replevied.
- 83. Attachment not dissolved by defendant's death, unless his estate be insolvent.
- 84. Officer to permit the appraisal of the property of a deceased person under attachment.
- 85. If commission of insolvency issue, officer to return the property.
- 86. If he have sold the property, he shall account for the proceeds.
- 87. If paid to the creditor, he shall refund.

- 88. Set off not allowed, in an action for recovery of such proceeds.
- 89. Any action by an officer, to recover attached property, shall not abate by his death.
- 90. Money, recovered in such suit, not to be assets.
- 91. Proceedings, if judgment be for defendant.
- 92. Attachment dissolved, by reference of the action and of all demands.
- 93. Also by an amendment, increasing the claim in the writ.
- 94. Definition of "final judgment" in an action.

ARTICLE IV. OF ARRESTS, AND BAIL IN CIVIL ACTIONS.

- 95. How bail shall be taken.
- 96. What bail an officer must take.
- 97. In what cases obligors are holden.
- 98. Bond to be returned with the writ.
- 99. Surrender of principal before court.
- 100. Surrender of principal by bail in a bastardy process.
- 101. Freedom from arrest, on fourth of July, and on fast and thanksgiving days.
- 102. Freedom of officers and soldiers from arrest, on training days.
- 103. Freedom of electors from arrest on election days.

ARTICLE V. LORD'S DAYS.

- 104. Civil process not to be served on Lord's days.

ARTICLE I. OF WRITS, AND WHERE ACTIONS MUST BE COMMENCED.

SECTION 1. The forms of writs in civil actions shall remain, as established in the year, eighteen hundred and twenty one, composing the sixty third chapter of the statutes of that year; which chapter remains unrepealed; but alterations may be made by the supreme judicial court or the district court, when necessary, to adapt them to changes in the law, or for other causes; but all such changes shall be subject to the final control of the supreme judicial court, which may, by general rules, regulate such changes in said courts or for justices of the peace.

SECT. 2. When the plaintiff and defendant both reside within the state, all personal and transitory actions shall be brought in the county, where one of the parties lives; and, where there are two or more plaintiffs, or two or more defendants, the action may be brought in the county, where either of the plaintiffs, or either of the defendants lives; and, when not so brought, on motion, or inspection by the court, the writ shall abate, and the defendant shall be allowed double costs; except as provided in the following sections.

Where actions shall be commenced, if the parties live in this state.  
 1821, 59, § 9.  
 1839, 368, § 1.  
 5 Mass. 94, 237.  
 5 Mass. 331.  
 3 Fairf. 17.

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Locality of actions on sheriffs' or coroners' bonds. 1821, 51, § 6. Actions on judgments rendered in this state. 1821, 59, § 34.

Jurisdiction sustained, if property be attached. 9 Mass. 462. 4 Greenl. 124.

Where actions shall be commenced against a county. 1821, 59, § 10. 7 Mass. 461. 11 Mass. 221.

Actions by a county. 1821, 59, § 10.

Actions between a corporation and a county. 1821, 59, § 11.

Actions by an inhabitant, against a county. 1821, 59, § 12.

Actions between two counties. 1821, 59, § 13.

Actions between towns, and other quasi corporations.

Actions between quasi corporations and individuals.

Actions between corporations and natural persons. 21 Pick. 257.

Actions for recovery of forfeitures. 1821, 59, § 45.

SECT. 3. All actions brought on bonds, given by sheriffs and coroners to the treasurer of the state, shall be brought in the county where such sheriff or coroner shall have been commissioned to act.

SECT. 4. All actions of debt, founded on judgment for damages and costs, or for costs only, rendered by any court of record in this state, may be brought in the county, where the same was rendered, or in the county in which either of the parties to such judgment, his executor or administrator may reside, at the time of bringing such action.

SECT. 5. In all actions commenced in any court proper to the same, jurisdiction shall be sustained, if goods, estate, effects or credits of any defendant, named in said action, are found within this state, and attached on the original writ; and service shall be made, as provided in the twenty eighth section of this chapter.

SECT. 6. Any local or transitory action against the inhabitants of a county, in their corporate capacity, may be commenced and tried, either in the county where the plaintiff lives, or in the county against which the action shall be brought.

SECT. 7. Any such action, commenced by a county, may be brought in the county where the defendant lives, unless he is an inhabitant of that county; in which case, the action may be commenced in any adjoining county.

SECT. 8. When any corporation shall be a party in any action, commenced by or against any county, it shall be commenced or tried in any adjoining county.

SECT. 9. Any such action against the inhabitants of a county, by a plaintiff belonging to such county, may be commenced and tried in such county, or in any adjoining county, at the plaintiff's election.

SECT. 10. Any local or transitory action, by one county against another county, may be commenced and tried in any adjoining county.

SECT. 11. When both parties are towns, parishes or school districts, the action shall be brought in the county, in which either of the parties shall be situated.

SECT. 12. When the action is between a town, parish or school district, and any other corporation or a natural person, it shall be brought either in the county, in which the plaintiff corporation is situated, or natural person lives, or in which the defendant corporation shall be situate, or natural person lives.

SECT. 13. When one of the parties is a corporation of any other description, than those mentioned in the two preceding sections, the action may be brought in any county, in which such corporation shall have an established place of business; or if either party is a natural person, the action may be brought in the county, in which he lives.

SECT. 14. Whenever any forfeiture is recoverable in a civil action, the same shall be brought in the county, in which the offence was committed, unless a different provision was made in the statute imposing the same; and, if on trial it shall not appear, that it was committed in the county where the action is brought, the verdict shall be in favor of the defendant.

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15. Any action, commenced against two or more defendants in different counties, and to be tried before a municipal court, or a justice of the peace, may be brought in any county where either of the defendants lives; and the writ in such cases shall be executed in such counties, accordingly, by the sheriff. And any action, commenced before either of said courts, shall be brought in the town where the plaintiff, or some other person, or trustee, or the attorney commencing the action lives.

Actions within the jurisdiction of justices.  
1827, 359, § 1.  
15 Mass. 280.  
3 Fairf. 17.  
15 Maine, 188.

II. OF INDORSEMENT OF WRITS, AND OTHER REQUISITES.

16. Every original writ, writ of scire facias, writ of error, writ of habeas corpus, writ of mandamus, writ of certiorari, petition for writ of mandamus, or bill in equity, shall, before entry of the same in court, be indorsed by some sufficient person, who shall then be an inhabitant of the state, when the plaintiff or petitioner, in any of the cases mentioned, shall not be an inhabitant of the state; and if, in such suit, such plaintiff or petitioner shall remove from the state, shall, on motion of the defendant or respondent, or any other person, be required to procure such [new] indorser.

What writs must be indorsed.  
1821, 59, § 8.  
8 Mass. 272.  
17 Mass. 222.  
1 Greenl. 399.  
3 Greenl. 27, 216.  
1 Fairf. 43.  
7 Pick. 117.  
11 Pick. 66.  
12 Pick. 569.

17. But when, in any of the cases before named, there be two or more plaintiffs or petitioners, and any one of them shall be an inhabitant of the state, no indorser shall be required, except by the order of court, on motion of the other party.

Modification of this provision.  
21 Pick. 212.

18. Every indorser shall be liable, in case of the avoidance of the plaintiff or petitioner, to pay all such costs, as shall be adjudged against the plaintiff; provided, the suit thereon shall be brought, within one year after the date of the judgment: which suit shall be an action on the case, in the court where the original judgment was rendered, and upon the execution issued in any such case, by an officer of the county, where said indorser lives, that he had demanded of the same of said indorser, and that said indorser has refused either to pay the same, or to shew said officer personal property of the plaintiff, sufficient to satisfy said execution, or that he cannot find said indorser within his precinct, shall be conclusive evidence of the liability of said indorser in said suit; but the provisions of this and the preceding section shall not extend to any costs as indorser, heretofore incurred.

Liability of the indorser.  
1821, 59, § 8.  
6 Mass. 494.  
8 Mass. 450.  
11 Mass. 411.  
2 Greenl. 128.  
4 Greenl. 79.  
6 Greenl. 350.  
2 Fairf. 443, 467, 491.  
15 Maine, 64.  
16 Maine, 18.

19. If, pending any suit or petition as aforesaid, any indorser, in the opinion of the court, be deemed insufficient, the court may require, that a new indorser should be furnished, who is a resident of the county, the defendant consenting that the name of the original indorser should be struck out; and the new indorser, so furnished, shall be liable for all costs, from the beginning of the suit, in like manner as if he had been the original indorser.

Proceedings, if indorser be deemed insufficient.  
1821, 59, § 8.  
13 Mass. 422.

20. If the plaintiff or petitioner shall, in any case, fail to procure such new indorser, according to the order of court, at the time appointed, the action shall be dismissed, and the defendant shall pay his costs.

Same subject.  
1821, 59, § 8.

21. All civil actions, excepting those founded on scire facias or other special writs, shall be commenced by original writs, and all be signed and sealed by the clerk and bear test of either

Writs, how authenticated.  
3 Fairf. 196.  
2 Pick. 552.



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of the justices of the court, who is not a party; provided, that writs issued by a justice of the peace, or judge of a municipal police court, shall be sealed and signed by such justice or judge.

Original writs may be issued by the clerk.

SECT. 22. All original writs, in the supreme judicial court, and any district court, may be issued by the clerk of said courts in any county, as well in vacation, as term time.

Form may be for attachment or summons.

SECT. 23. The original writ may be framed either to attach the goods or estate of the defendant, and for want thereof to take his body; or it may be an original summons, either with or without order, to attach the goods or estate.

Separate summons to be left, if attachment be made. 1821, 59, § 1.

SECT. 24. When goods or estate are attached on either of said writs, a separate summons, in form by law prescribed, shall be delivered to the defendant, or left at his dwelling house or place of last and usual abode, fourteen days before the sitting of the court, to which the same writ is made returnable; which shall be a sufficient service of the writ or original summons.

Writ and summons may be combined, in actions against corporations.

SECT. 25. In actions against corporations, and in other cases where goods or estate are attached, but in which the defendant is not liable to arrest, the writ and summons may be combined in one.

ARTICLE III. OF THE SERVICE OF WRITS, ATTACHMENT OF PROPERTY, AND DISPOSAL THEREOF.

Service of original summons. 1821, 59, § 2.

SECT. 26. In all cases, wherein the process is by original summons, as against executors, administrators or guardians, in ejectment, dower, scire facias, error, review, and all other civil actions, where the law does not require a separate summons to be left with the defendant; the service thereof, by the proper officer, shall be sufficient, either by his reading the writ or original summons to the defendant, or by giving him in hand, or leaving at his dwelling house or place of last and usual abode, a certified copy thereof, fourteen days before the same is returnable.

Service, if defendant be not an inhabitant of this state. 1821, 59, § 1. 6 Greenl. 218.

SECT. 27. If the defendant was never an inhabitant of the state, or has removed therefrom, then the summons, where goods and estate are attached, or a copy of the original summons, as the case may require, shall be left with his tenant, agent or attorney, fourteen days before the sitting of the court, as aforesaid.

Same subject. 1821, 59, § 1. 1837, 285.

SECT. 28. When the goods or estate of any person, not being an inhabitant of the state, and having no tenant, agent or attorney, within the same, have been attached in any civil action, any justice of the court to which the writ is made returnable, may, in vacation, and before entry of the action, make his order, by him signed on the back of said writ, directing in what manner such defendant shall be notified of the said suit and attachment; or the court, after entry, may order such notice to the defendant, as justice may require; and such order having been complied with, and proof of the service of such notice being made to the satisfaction of the court, the defendant shall be held to answer to such suit, as in other cases, where service is made, as prescribed in the preceding section.

Personal estate liable to attachment. 14 Mass. 190. 21 Pick. 197.

SECT. 29. All goods and chattels may be attached, and held as security to satisfy the judgment for damages and costs, which the plaintiff may recover, except such as from their nature and sit-

tion have been considered, as exempted from attachment, according to the principles of the common law, as adopted and practised in this state, and such as are hereinafter mentioned.

**SECT. 30.** All real estate, which is liable to be taken in execution, according to the provisions of chapter, ninety four, may be attached on mesne process, and held as security for the purposes, mentioned in the preceding section; but it shall not be deemed necessary that the officer, in order to make such an attachment, should enter on such estate, or be within view of it.

Attachment of real estate on mesne process. 4 Pick. 277.

**SECT. 31.** A right in equity of redeeming lands mortgaged, or taken in execution, may be attached on mesne process; and, when attached, if, before the levy of the execution, the lands, so mortgaged or taken in execution, are redeemed, and the incumbrance removed, the attachment shall hold the premises discharged of the mortgage or levy, as effectually as if no mortgage or levy had existed; and the premises had been attached.

Attachment of equities of redemption. 1821, 60, § 1. 1833, 87, § 1.

**SECT. 32.** No attachment of real estate on mesne process shall be deemed and considered, as creating any lien on such estate, unless the officer, making such attachment, within five days thereafter, shall file in the office of the register of deeds in the county district, in which all or any part of said lands are situated, an attested copy of so much of the return, made by him on the writ, as relates to the attachment, together with the names of the parties, the sums sued for, the date of the writ, and the court to which it is returnable; except as mentioned in the thirty fourth section of this chapter. And such proceedings shall be had in such office by the register of deeds, as are prescribed in the eleventh chapter, thirteenth section.

Registry of attachment of real estate, within five days. 1838, 344, § 1.

**SECT. 33.** No such attachment, though made and notice thereof given as directed in the preceding section, shall be valid, unless the plaintiff's demand, on which he founds his action, and the nature and amount thereof are substantially set forth in proper counts, or specification of such claim shall be annexed to such writ.

In such case, plaintiff's demand shall be set forth in the declaration. 1838, 344, § 4.

**SECT. 34.** But if the attested copy of the return, on the writ made, shall be lodged in the office of the register of deeds, as mentioned in the thirty second section of this chapter, then the attachment shall take effect from the time it was made; otherwise it shall take effect from the time when such copy of the return is so deposited in the registry of deeds, notwithstanding it may be after the summons or copy was served on the defendant.

Effect of registry after five days.

**SECT. 35.** No personal property, and no real estate, except equities of redeeming real estate mortgaged, or taken in execution, or equities of redemption, which have been sold on execution, or an obligee's conditional right to a deed of conveyance of real estate to him, which has been sold on execution, and except property attached and replevied, and property attached, belonging to a person dying after an attachment of it had been made, or specially provided for in any other case, shall be held by virtue of an attachment, longer than thirty days next after the day, on which final judgment was rendered in the suit, in which the same was attached, or be taken in execution.

Duration of attachments. 1821, 60, § 1, 17. 15 Mass. 225. 3 Fairf. 241.

**SECT. 36.** When final judgment is rendered for the defendant, the attachment shall be thereby forthwith dissolved.

Attachment dissolved, by final judgment for defendant. 4 Mass. 99.

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Certain attachments valid, though the property be left in defendant's possession.  
 1821, 60, § 34.  
 11 Mass. 184.  
 7 Greenl. 178.  
 Property exempt from attachment.  
 1821, 95.  
 Wearing apparel, beds and furniture.  
 15 Mass. 170.  
 16 Maine, 263.  
 Tools.  
 13 Mass. 82.  
 1 Fairf. 135.  
 2 Pick. 80.  
 10 Pick. 423.  
 Books.  
 Stoves.

Stock and hay.  
 1830, 478.  
 15 Mass. 205.

Produce.  
 1826, 341.  
 14 Maine, 312.

Pew.  
 1826, 341.

Potatoes.  
 1828, 394.

Firewood.  
 1831, 513.

Boat.  
 1835, 172.

Plough, cart, harrow, cooking stove, and coal.  
 1838, 307.

Certain neat stock, and hay.  
 1839, 413, § 1.  
 1840, 49, § 1.

SECT. 37. When hay in a barn, horses or neat cattle, attached by a creditor, and are suffered to remain, by the permission of the officer, in the debtor's possession, on security given their safe keeping and delivery to the officer, the same shall not be subject to a second attachment, to the prejudice of the first.

SECT. 38. The following goods and property shall be exempt from attachment and execution; that is to say:

*First.* The debtor's wearing apparel, beds, beadsteads, bedding and household utensils, necessary for himself, his wife and children, provided, that the beds and bedding, so exempted, shall not exceed one bed, bedstead and necessary bedding for every two persons, the other household furniture, the value of fifty dollars;

*Second.* The tools of any debtor, necessary for his trade or occupation;

*Third.* All bibles and school books in actual use in the family, and one copy of the statutes of the state;

*Fourth.* All cast iron and sheet iron stoves, used exclusively for warming buildings;

*Fifth.* One cow and one heifer, till she shall become three years old, two swine, one of which shall not weigh more than one hundred pounds; and when he owns a cow and heifer, more than three years old, or two swine, each weighing more than one hundred pounds, he may elect the cow or the heifer, or either of the swine, to be exempted as aforesaid; ten sheep, and the wool therefrom may be shorn from them, and thirty hundred of hay for the use of said cow, and two tons for the use of said sheep, and a sufficient quantity for said heifer, according to its age;

*Sixth.* All produce of farms, while standing and growing, until harvested, and corn and grain necessary and sufficient for the subsistence of the debtor and his family, not exceeding thirty bushels;

*Seventh.* All the debtor's interest in one pew, in any meeting house, where he and his family stately worship;

*Eighth.* All potatoes, raised or purchased for the consumption of himself and family;

*Ninth.* All the firewood conveyed to debtor's house, for the use of himself and family, not exceeding twelve cords;

*Tenth.* One boat, not exceeding two tons burthen, usually employed in fishing business, belonging wholly to an inhabitant of this state;

*Eleventh.* One plough of the value of ten dollars, one cart of the value of twenty five dollars, one harrow, of the value of five dollars, and one cooking stove of the value of thirty five dollars, and all anthracite and bituminous coal, and charcoal, conveyed to any person's house, to be consumed in the family of such person, not exceeding five tons of anthracite and fifty bushels of bituminous;

*Twelfth.* One pair of bulls, steers or oxen, raised by the owner from his own cows, or purchased by him, before the said bulls or steers were one year old, or by him, at any time, obtained by exchange of said bulls, steers or oxen, for others of the same age, with a sufficient quantity of hay to keep the same through the winter season; provided, that the said owner began to raise, or pur-

used the said stock, after the twenty fourth day of April, in the year, one thousand eight hundred and thirty nine. CHAP. 114.

**SECT. 39.** When an attachment is made of any personal property, which, by reason of its bulk or other special cause, cannot be immediately removed, the officer may, within five days thereafter, in the office of the clerk of the town, in which such attachment is made, an attested copy of so much of the return made by him on the writ, as relates to the attachment, together with the names of the parties, the sums sued for, the date of the writ, and the court to which it is returnable; and such attachment shall be effectual and valid, as if the property had remained in possession and custody of the officer.

Preservation of attachment on property, which cannot be removed.

**SECT. 40.** It shall be the duty of the clerk to receive such copy, and note thereon the time of his receiving it; and also record the same in a book kept for that purpose, for which he shall be entitled to ten cents.

Clerk to record the officer's return.

**SECT. 41.** When a suit shall be brought against a county, the summons shall be served, by leaving an attested copy thereof with the commissioners, or with their clerk.

Service of a writ upon a county.

**SECT. 42.** In all suits against the inhabitants of any town, parish, religious society or school district, the summons shall be served by leaving a copy thereof with the clerk, or one of the selectmen or assessors of the corporation sued, if there be any such officer; if not, with any member of such corporation.

Service upon a town, or other quasi corporation. 1821, 59, § 6.

**SECT. 43.** In suits against all other corporations, whether created by act of the legislature, or, under a general law of the state, incorporated by application to a justice of the peace, for a warrant, and, after due notice to all concerned, by assembling, under the authority of such warrant, and thus forming a corporation and electing its officers, the summons shall be served by leaving a copy of it with the president or clerk, cashier, treasurer, or any general agent or director, as the case may be, of the corporation sued; if there be no such officer or agent, found within the county where such corporation is established, or where its records or papers are by law required to be kept, such copy may be left with any member of the corporation.

Service upon other corporations. 1821, 60, § 2. 16 Maine, 371.

**SECT. 44.** In all the cases mentioned in the three preceding sections, the writ shall be served thirty days before the sitting of the court, to which the writ is made returnable.

Time of service upon corporations. 1821, 59, § 6.

**SECT. 45.** When the share or interest of any person, in any incorporated company, shall be attached on mesne process, an attested copy of the writ, with a notice thereon of such attachment, signed by such officer, shall be left with the clerk, cashier or treasurer of such company; and such attachment shall be a lien on all accruing dividends, as well as on the share; and if the officer, having the writ of attachment, shall exhibit the same to the officer of the company, having custody of the account of shares, or interest of the stockholders, and request a certificate of the number held by the defendant, and such officer shall unreasonably refuse to give it, or fully give him a false certificate thereof, he shall pay double the damages, occasioned by such refusal or neglect; to be recovered against him, in an action on the case, by the creditor.

Attachment of shares in a corporation. 1821, 60, § 1, 8.

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Attachment of the franchise of certain corporations.  
1821, 60, § 2.

Mode of service on one of several defendants, not an inhabitant of this state.  
1821, 59, § 5.

Proceedings, where service of a writ is defective.

Mode of suing a person, whose name is unknown.

Attachments on the same writ, in different counties.

Writs of scire facias.  
1830, 463, § 2.

Personal property attached, may be sold by consent.  
1831, 508, § 1.  
6 Pick. 455.  
17 Pick. 429.  
1 Metc. 34.

Living animals, and perishable goods attached, may be sold without consent.  
18 Pick. 407.

Appointment of appraisers of such property.

SECT. 46. The franchise and all rights, privileges and immunities of any incorporated company, of demanding and receiving tolls, or other corporate property, may be attached on mesne process; and the officer, making the attachment, shall leave an attested copy of the writ, with a notice thereon of such attachment, signed by such officer, with the clerk, treasurer, or some officer or member of the corporation, as provided in section, forty three.

SECT. 47. When an action is commenced against two or more persons, on a joint obligation or contract, and any one or more of them is not an inhabitant of the state, and has no tenant, agent or attorney in the state, service made on him, as is provided in the twenty eighth section of this chapter, shall be deemed sufficient unless further notice shall be ordered by the court.

SECT. 48. When the service of a writ is defective or insufficient by reason of some mistake of the officer, or of the plaintiff, as to the place where, the time when, or the person with whom, the summons or copy should have been left, the court may, if they think proper, order a new summons to be issued and served, in such manner as they may direct; and such service shall be as effectual as if made and returned on the original writ.

SECT. 49. When the name of a defendant is not known to the plaintiff, the writ may issue against him, by a fictitious name; and if duly served, it shall not be abated for that cause, but may be amended on such terms, as the court shall order.

SECT. 50. Different attachments in one or more counties may be made successively upon the same writ, and by different officers before the service of the summons upon the person, whose property is attached; but none after such service.

SECT. 51. All writs of scire facias may contain a direction to the officer, who shall serve them, to attach the property of those against whom they issue, and also to arrest the bodies, when liable to be arrested, in the same manner as may be done in case of writs of attachment.

SECT. 52. When personal property is attached, if the creditor and debtor consent, the officer may sell the same before judgment, observing the directions for selling on execution; and, when the same property is attached by different creditors, in different suits, the same may be so sold by the first attaching officer, or, in case of his death, if he was a deputy sheriff, then by the sheriff or another deputy, by the written consent of the defendant and all attaching creditors; and the proceeds of the sales, after deducting the necessary expenses, shall be held by such first attaching officer, or the sheriff, subject to the successive attachments, in like manner, as if the sale had been on execution.

SECT. 53. When living animals, or goods liable to perish or waste, or be greatly reduced in value by keeping, or which cannot be kept without great expense, are attached, and the parties shall not consent to a sale thereof, as before provided, the property so attached, at the request of either of the parties interested therein, may be examined and appraised in the manner following.

SECT. 54. Upon such request made to the officer, he shall give notice to all parties, and prepare a schedule of the goods, and cause

three disinterested persons, acquainted with the nature and value of such goods, to be appointed and duly sworn, as appraisers of such goods. CHAP. 114.

SECT. 55. The appraisers shall be appointed, one by the creditor or creditors, one by the debtor or debtors, and one by the officer; and, if the creditors neglect to appoint one, or cannot agree, the officer shall appoint one in their behalf, and he shall do the same, if the debtor or debtors neglect, or cannot agree, to appoint one. Same subject.

SECT. 56. The appraisers shall examine the property attached, and, if they are of opinion, that the same, or any part of it, is liable to perish, or waste, or to be greatly reduced in value by keeping, or be kept at a great expense, they shall proceed to appraise the same, according to their best judgment, at the value thereof in money; and the goods shall thereupon be sold by the officer, and the proceeds shall be held and disposed of in the manner before provided, in the case of a sale by consent of parties, unless the goods shall be taken by the debtor, as provided in the following section. Mode of appraisal.  
18 Pick. 407.

SECT. 57. The goods shall be delivered to the debtor, after having been thus appraised, if he shall require it, on his depositing, with the attaching officer, the value thereof in money, or giving bond to him with two sufficient sureties, with condition, either to pay him the appraised value of the goods, or to satisfy all such judgments, as shall be recovered in the suits, in which the goods were attached, if demanded within the time, during which the goods would have been held by the respective attachments, or within thirty days after the time, when the creditors respectively might have been entitled to demand payment out of the proceeds of said goods, if they had been sold as before provided. Defendant may have the property, on giving bond.

SECT. 58. The officer taking such bond, shall return the same with the writ, on which the first attachment is made, in like manner, as bail bonds are returned, with a certificate of his doings in relation thereto; and, in case of a forfeiture of said bond, the creditors, or any one or more of them, may bring an action of debt thereon, in the name of the officer. Bond to be returned with the writ. Suit thereon.

SECT. 59. The writ, in such action, shall be indorsed with the names of the creditors, by whom the action is brought; and in case judgment is rendered for the defendants, execution for the costs shall be issued against all the creditors, whose names are so indorsed, or separate executions against each creditor for his proper proportion, as the court shall consider most equitable and just. Proceedings in such suit.

SECT. 60. If judgment shall be rendered for the plaintiff, the money recovered shall be first applied, under the order of court, to pay the reasonable expenses, incurred by the creditors, in prosecuting the suit, so far as the same shall not be reimbursed by the costs recovered of the defendant; and the residue shall belong to all the attaching creditors, according to their respective rights. Application of the money recovered.

SECT. 61. No judgment or execution shall be awarded, for the use of any creditor, without reserving as much as may be due upon any prior attachment, whether the creditor in such prior suit be, or be not, one of those by whom the action is brought on the bond. Priority of executions.

SECT. 62. Any creditor, entitled to the benefit of the bond, who Mode of secur-

**CHAP. 114.** shall not have joined in bringing the action thereon, may, after judgment in such action, bring a scire facias on the judgment, and recover any sum, that may be due to him upon the bond; or he may, upon his motion, at any time before final judgment in the action on the bond, be allowed, upon such terms as the court shall order, to become a party to the suit, in like manner and with the same effect, as if he had been one of the original plaintiffs, and his name shall be indorsed on the writ accordingly, with the names of the other creditors. But no creditor, whose cause of action on such bond accrued more than one year before the commencement of the action thereon, shall have judgment or execution in such action: and no creditor shall sue out any such writ of scire facias on the judgment, unless within one year, after the cause of the action shall accrue.

Priority of satisfaction, in case of sale.

**SECT. 63.** When goods, which are sold or appraised and delivered to the debtor, in the manner before provided, shall have been attached by several creditors, any one of them may demand and receive satisfaction of his judgment, notwithstanding any prior attachments; provided, he is otherwise entitled to demand the money; and provided also, that a sufficient sum be left, of the proceeds of the goods, or of the appraised value, to satisfy all prior attachments.

Surplus proceeds of sale, liable to attachment in the officer's hands.

**SECT. 64.** When goods are sold or disposed of, either by consent of parties, or after an appraisal as aforesaid, the proceeds thereof whilst remaining in the hands of the officer, shall be liable to be further attached by him, as the property of the original defendant in like manner as the goods themselves would have been liable, they had remained in the possession of the officer; and the proceeds so attached, shall be held and disposed of in the same manner, as if the attachment had been made, on the goods themselves, before the sale thereof; but nothing in this section shall prevent the officer from paying over to the defendant the surplus of the proceeds of any sale, after retaining enough to satisfy all the attachments, actually existing thereon at the time of such payment.

Defendant's share of property attached, may be appraised, on request of another part owner.

**SECT. 65.** When any personal property, belonging to two or more persons, is attached in any suit against one or more of the part owners thereof, it shall, upon the request of any other of the part owners, be examined and appraised, in the manner before provided for an appraisement, when made at the request of any party in the suit; except, that the part owner, who makes the application, shall appoint one of the appraisers, and the defendant shall not appoint any.

Property to be delivered to such part owner, on his giving bond.

**SECT. 66.** The property shall be delivered to the part owner, at whose request it was appraised, upon his giving bond to the attaching officer in a sufficient penalty, with two sufficient sureties, with condition to restore the same in like good order, or pay the officer the appraised value of the defendant's share or interest in such property, or to satisfy all such judgments as shall be recovered in the suit, in which the property is attached, if demanded within the time, during which the property would have been held by the respective attachments.

Lien thereon,

**SECT. 67.** If such appraised value, or any part thereof, shall be

so paid, the defendant's share of the property shall thereby become pledged to the party to whom it was delivered; and he may sell the same, if not redeemed, and shall account to the defendant for the balance, if any, of the proceeds of such sale. **CHAP. 114.**  
if he discharge the attachment.

**SECT. 68.** If the attachment shall, in any way, be dissolved, the party, to whom the defendant's share was delivered, shall restore the same to the defendant, or to the officer, who made the attachment, to be by him delivered to the defendant. Defendant's rights, if attachment be dissolved.

**SECT. 69.** The doings of the officer, together with the bond aforesaid, shall be returned by him in the manner above provided, in the case of a bond given by a debtor upon the delivery of property attached; and in case of the forfeiture of any such bond by a part owner, the like proceedings may be had thereon, as before provided, upon the forfeiture of the bond given by a debtor. Officer to return the bond, with the writ.

**SECT. 70.** It shall be lawful, in any civil action, to attach any personal property, mortgaged, pledged, or subject to any lien created by law, not by law exempted from attachment, and of which the debtor has the right of redemption, and to hold the same in like manner as if it were unincumbered; provided, the attaching creditor shall first tender or pay to the mortgagee, pledgee or holder, the full amount of the demand, for which the said property is mortgaged, pledged, or subject to any lien as aforesaid. Attachment of the right of redeeming personal property. 1835, 188, § 2. 17 Pick. 85.

**SECT. 71.** Every mortgagee, pledgee, or holder of personal property shall, on demand in writing made upon him by any person, desirous of attaching the same for a debt or demand against the mortgager, pledger or general owner, render a just and true account of the debt or demand secured by such mortgage, pledge or lien; and any mortgagee, pledgee or holder, who shall, after six hours next after such demand made, unreasonably neglect to render such account, or shall receive more than is justly due him on account of the demand, so secured, shall refund the excess, with ten per cent. interest thereon, to the time of recovering judgment. Holder bound to state the amount due. 1835, 188, § 3.

**SECT. 72.** When any property, attached on mesne process, shall be claimed by any person, not being a party to the suit, and such person shall omit, for the space of ten days after notice, given him therefor by the attaching creditor, to bring his action of replevin for such property, the officer making the attachment may, at the request of the plaintiff, and on his responsibility, the other attaching creditors, if any, consenting thereto, sell the same at public auction, in the manner provided for the sale of goods on execution, in the one hundred and seventeenth chapter; unless the defendant shall claim the property in his own right, and forbid such sale; but the sale shall not impair the rights of any party claiming the property. Sale of property attached, when claimed by a third person. 1831, 508, § 7.

**SECT. 73.** Not only the right in equity of redeeming lands mortgaged, but also the right of redeeming such right or equity of redemption, after the same has been sold on execution, and also the right of redeeming lands, levied upon or sold on execution, and the right, title and interest which any person has, by virtue of a bond or contract, to a deed of conveyance of real estate, on specified conditions, may be attached on mesne process, and the same lien thereon shall be thereby created by such attachment, as if they were tangible property. Attachment of certain other interests in real estate. 1829, 431, § 1. 1833, 87. 1 Fairf. 113. 14 Maine, 34. 15 Maine, 157.



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Cross actions, and set offs, where plaintiff is an inhabitant of another state.

SECT. 74. When an action is brought in this state by any person, who is not an inhabitant thereof, or who cannot be found therein to be served with process, he shall be held to answer to an action brought against him by the defendant; provided, the demands in the two cases be of such a nature, that the judgment or execution, in the one case, can be set off against the judgment or execution, in the other.

Same, in case of several defendants. 1 Metc. 80.

SECT. 75. If there are several defendants in the original action, each of them shall be authorized to bring such cross action against the original plaintiff; and, upon recovering judgment therein, may be allowed to set off his judgment against that, which may be recovered against himself and his co-defendants, in like manner, if the latter judgment had been against himself alone.

Service of writ, in such cross action.

SECT. 76. The writ, in such cross action, may be served on the person, who appears as attorney of the plaintiff in the original action; and such service shall be as valid and effectual, as if made on the party himself in the state; and, in the cases mentioned in the two preceding sections, the court may order such continuance, as justice may require for the defence of either of the actions, or for setting off the demands, as therein provided.

Disposal of goods attached by an officer, in case of his death.

SECT. 77. Goods and chattels, attached by an officer, in case of his death, whether remaining in his custody or taken from him by replevin or otherwise, and also all claims for damages to goods so taken from him, shall remain subject to the attachment in like manner, as if the officer had lived; and shall not be considered as assets in the hands of his executors or administrators.

How far goods, taken from an officer by replevin, are to be considered as in his custody.

SECT. 78. All goods taken, by replevin, from an officer, who has attached them, shall be considered as remaining in his custody and control, so far as to be liable to further successive attachments, in like manner as if the goods themselves had remained in his possession; subject to the provisions in the three following sections.

Liability of the plaintiff in replevin, on the bond, in case of judgment for a return.

SECT. 79. In case of judgment for a return of the goods, so replevied, the plaintiff in replevin and his sureties shall be liable for the whole of the goods, or the value thereof, although the attachment, for which they were eventually held, should have been made, after the taking of the goods by the replevin.

In case an officer dies, having goods under attachment, they are liable to be further attached.

SECT. 80. If an officer, after making an attachment of goods, shall die or be removed from office, whilst the attachment remains in force, the same goods, whether replevied or remaining in the possession of the officer, or of his executors or administrators, or other person having the possession or care of them, may be further attached by any officer, so as to bind the goods, or the proceeds thereof, in like manner, as if the latter attachment had been made by the first mentioned officer.

Notice how given, of such subsequent attachment.

SECT. 81. The officer, making the latter attachment, shall not take the goods themselves, but the attachment shall be made by a return, setting forth an attachment in the common form, and stating by whom the goods were previously attached; and, if the goods have not been replevied, by leaving a certified copy of the writ, omitting the declaration, and of the return of that attachment, with the former officer, if living, or if he is dead, with his executor or administrator, or if none are appointed, then with the person bar-

ing possession of the goods; or, if the goods have been replevied, and the officer, who made the original attachment, is dead, such copy shall be left with the plaintiff in replevin, or his executors or administrators; and the attachment shall be considered as made, when such copy is delivered, in either of the modes before described.

**SECT. 82.** Goods, that have been taken by replevin from an attaching officer, shall not be further attached as the property of the original defendant, in any other manner than that provided in the four preceding sections, so long as they are held by the person who replevied them, or by any one holding under him; unless the original defendant shall have acquired a new title to the goods.

**SECT. 83.** When any estate, or goods and chattels, are attached, and the debtor dies, before they are taken in execution, the attachment shall remain in full force, in like manner as if the defendant were alive, unless the estate of the deceased shall be represented by the executors or administrators of the deceased as insolvent; and a commission of insolvency shall thereupon issue within one year, next after the defendant's death.

**SECT. 84.** After the decease of any defendant, and before the issuing of any commission of insolvency, as mentioned in the preceding section, the executor or administrator on the estate of the deceased may demand of the officer, who made the attachment of such estate or goods and chattels, a certified copy of the return of such attachment, and a description of such property, so particular as to enable such executor or administrator to describe the same in the inventory of the estate, subject to such attachment, so far as is before mentioned; and the appraisers may also demand of such officer a view of such goods and chattels, so that they may know their value: and, if such officer shall refuse or neglect to comply with either of such demands, he shall forfeit and pay, to such executor or administrator, a sum not exceeding thirty, nor less than ten dollars.

**SECT. 85.** When a commission of insolvency shall have been issued, within one year from the death of the debtor, and such attachment thereby dissolved, the officer, on demand, shall restore the goods and chattels attached, to such executor or administrator, to be administered according to law, on payment of his legal fees and charges of keeping the goods.

**SECT. 86.** If, before any demand made on the officer as above provided, he shall have sold the goods and chattels, attached by him as aforesaid, upon execution, or any other chattel interest, or right of redemption, he shall not be deemed a trespasser in so doing, but shall be liable only for the proceeds of the sale, after deducting his legal fees, and charges for keeping the goods; and such proceeds may be recovered by the executor or administrator, in an action for money had and received.

**SECT. 87.** If such officer shall have paid over the proceeds to the judgment creditor, before such demand, the executor or administrator may recover such sum from the creditor, by a similar action for money had and received.

**SECT. 88.** In an action founded on either of the preceding sections, the defendant shall not be allowed, in any manner, to set off

Limitation of the right to attach goods replevied.

Attachment not dissolved by defendant's death, unless his estate be insolvent.  
1821, 60, § 32.  
7 Mass. 254.  
9 Mass. 209.  
1 Greenl. 333.

Officer to permit the appraisal of the property of a deceased person under attachment.

If commission of insolvency issue, officer to return the property.

If he have sold the property, he shall account for the proceeds.

If paid to the creditor, he shall refund.

Set off not allowed, in an action for re-

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covery of such proceeds.  
Any action by an officer to recover attached property shall not abate by his death.

**SECT. 89.** When an action of replevin, trover or t be brought by an officer against any person, for taking his possession any goods or chattels by him attached, shall not abate by the death of either of the parties; prosecuted by or against the executors or administr deceased party, in like manner as in actions on contrac

Money recover- ed in such suit, not to be assets.

**SECT. 90.** If, in such action, judgment should be r the plaintiff, the goods or money recovered shall be h propriated, and disposed of, in the same manner, as and ought to have been, by the officer, if he had lived ered the same himself.

Proceedings, if judgment be for defendant.

**SECT. 91.** If judgment be rendered against the administrator, the goods, and damages recovered, shall delivered and paid, in full, by the executor or administ the estate of the deceased be insolvent.

Attachment dissolved, by reference of the action and of all demands.  
4 Greenl. 277.

**SECT. 92.** Whenever an attachment of real or pe erty shall be made, and afterwards the parties in the : rule of court, submit the same action, and all other dea they may have on each other, to the decision of refere ment be rendered on their report, such submission and shall dissolve the attachment.

Also, by an a- mendment, in- creasing the claim in the suit.  
7 Greenl. 348.

**SECT. 93.** If, by consent of parties, the declaration so as to embrace a larger demand than it originally co judgment be thereon rendered for the plaintiff, the attac on the mesne process shall be thereby dissolved, un appear by the record, that no claim was allowed to i except those stated in the writ.

Definition of, "final judg- ment," in an action.

**SECT. 94.** The final judgment, mentioned in the thi thirty sixth sections, shall be construed to be, that whic in the original action, and not such as may be rendere or a writ of error.

**ARTICLE IV. OF ARRESTS, AND BAIL IN CIVIL A**

How bail shall be taken.  
1821, 67, § 1.  
8 Greenl. 422.

**SECT. 95.** When bail is taken on mesne process, it bond to the sheriff, if the process be served by him, or otherwise to the officer making the arrest, with conditi defendant shall appear and answer to the suit, and abide the final judgment thereon, and not avoid.

What bail an officer must take.  
9 Mass. 479.  
12 Mass. 127.  
13 Mass. 187.  
2 Greenl. 46.

**SECT. 96.** No officer shall be obliged to accept unless signed by two sureties, at least, having sufficient the county in which the principal is arrested, or held and, if he shall take a bail bond, with only one surety. liable to the plaintiff for any deficiency of the bail, surety was, at the time he was taken, actually sufficien

In what cases obligors are holden.  
2 Pick. 284.

**SECT. 97.** A bail bond shall bind the obligors, th by only one surety, or when signed by two or more su all or any of them had not sufficient property in the co

Bond to be re- turned with the writ.  
1821, 67, § 1.

**SECT. 98.** The bail bond taken shall be returned w and the clerk shall note upon the writ, that a bond is s

**SECT. 99.** Any person, who has become bail for another, may, before the action is entered in court, exonerate himself from all liability by surrendering his principal to the common jail in the county, where the arrest was made, or in the county where the writ is made returnable, leaving with the jailer of such county, within fifteen days after such commitment, an attested copy of the writ or process, whereby the arrest was made, and of the return indorsed thereon, and of the bail bond; and such jailer shall receive the person into his custody, in the same manner as if the officer, who made the arrest, had committed him; and provided, that such bail should have notified, in writing, the plaintiff or his attorney, of the time when, and place where the principal has been committed, within fifteen days after such commitment.

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Surrender of principal before court. 1821, 67, § 1. 1831, 522. 16 Mass. 218.

**SECT. 100.** In all cases of bond, given by a person, charged as the father of a bastard child, the sureties shall have the same power to surrender the principal, at any time, as well before entry of the prosecution, as after, as the bail in civil actions have; and thereupon entitle themselves to be discharged from their liability.

Surrender of principal by bail, in a bastardy process. 1836, 210, § 2.

**SECT. 101.** No person shall be arrested, in any civil action, on mesne process or execution, or on any warrant of distress for taxes, on the fourth day of July, or on the day of the annual fast or thanksgiving.

Freedom from arrest on fourth of July, and on fast and thanksgiving days. 1836, 232, § 1.

**SECT. 102.** On the day of any military training, inspection, review or election, no officer, whose duty it may be to attend, and no soldier, who is enrolled as such, liable to do military duty, and shall have been duly notified to attend on said days, shall be arrested on mesne process or execution, or for taxes as aforesaid.

Freedom of officers and soldiers from arrest on training days. 1836, 232, § 2. 16 Maine, 132.

**SECT. 103.** No elector shall be arrested, except for treason, felony, or breach of the peace, on the days of election of United States, state and town officers.

Freedom of electors from arrest on election days. Const. art. 2, § 2. 8 Greenl. 187.

**ARTICLE V. LORD'S DAYS.**

**SECT. 104.** No person shall serve or execute any civil process, from midnight preceding, to midnight following the Lord's day; but such service shall be void, and the person, executing such process, shall be liable in damages to the party aggrieved, in like manner, as if he had not had any such process.

Civil process not to be served on Lord's days. 1821, 9, § 9. 15 Pick. 465.

**CHAPTER 115.**

**OF PROCEEDINGS IN CIVIL ACTIONS IN COURT.**

- SECT. 1.** Time of entry. Provision, if the court be not held.
- 2.** Default of defendant, if he fail to appear. *Proviso.*
- 3, 4.** Proceedings, if defendant were out of the state, at the time of service.

- SECT. 5.** Bond to be given, if absent defendant be defaulted, not having received notice.
- 6.** Bond to be left with the clerk.
- 7.** Right of review in one year, in such case.
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- SECT. 9.** No process to abate for circumstantial errors.
10. Amendment of such defects.
  11. Amendment, if too many defendants have been sued.
  12. Amendment, by adding more defendants, and service on them.
  13. Distinction between trespass and case abolished.
  14. Treasurers may bring actions in their own names.
  15. Assignment of breaches, in actions on bonds.
  16. Actions for breach of certain covenants in deeds, how commenced.
  17. Grantee, after conveyance to a third person, not to release the covenants of his grantor.
  18. Defendant may plead specially, or general issue with a brief statement. Counter brief statement.
  19. Justification in a suit for a libel.
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27. Must be founded on judgment or contract.
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  47. Set offs before municipal courts and justices.
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50. Auditors to notify parties.
51. Majority may decide by all.
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63. How returned.
64. New jurors may be returned, in certain term time, in certain cases.
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- 80. No arrest of judgment.
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- 83. Proceedings, if a party die before entry of an appeal.
- 84. Judgment on general verdict, if any count be good.
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- 89. Costs to be paid, before bringing a new suit after nonsuit or discontinuance.
- 90. Liability for costs, of an individual, who sues in the name of the state.
- 91. State liable for costs, if such action be for its benefit.
- 92. State's attorney to tax no travel.
- 93. Costs, in case a plaintiff brings divers actions at the same court, which might be joined.
- 94. Taxation of fees for travel.
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- 102. When executions may issue, and when returnable.
- 103. Justice executions, when returnable.
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- 107. Interest to be collected on executions.
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- 109. In actions of trespass, court or jury to decide whether the trespass was wilful.
- 110. Damages on dishonored bills, payable out of the state.
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- 112. Appointment of surveyor, in certain cases.
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- 114. Manner of petitioning.
- 115. Bond to be given, if he be allowed to defend.
- 116. Entry on the record.
- 117. Proceedings, if petitioner fail in his defence.
- 118. Proceedings and costs, if petitioner prevail.
- 119. If first attachment were fraudulent, it shall be void.
- 120. Actions brought by public officers not to abate by their vacating their office.

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**SECTION 1.** No action shall be entered in the supreme judicial court, or district court, after the first day of the session thereof, without the special permission of the court; and no suit, process or proceedings, pending in any court, shall be discontinued, by reason of such court not having been held at any stated term, or at any adjournment thereof; but they shall be respectively returned to, and have day in the term or session, which shall be held next after such failure.

**SECT. 2.** When the defendant shall have been duly served with process, and return thereof made, according to the mandate of the

Time of entry. Provision, if the court be not held. 1821, 59, § 14.

Default of defendant, if he fail to appear. Proviso.

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1821, 59, § 15.

writ, or order of a judge of the court indorsed thereon, and shall not appear by himself or attorney, his default shall be recorded, except as hereinafter provided; but such default shall be erased and taken off, by leave of court, or without such leave, if the defendant shall appear in court in person or by attorney, at any time before the jury are dismissed, and pay to the plaintiff such costs as the court shall order: and if, by the return of the officer or otherwise, it appears to the court, that the defendant has not had sufficient notice, they may order such further notice, as they may think proper.

Proceedings, if defendant were out of the state, at the time of service.  
1821, 59, § 7.  
1 Mass. 341.  
12 Pick. 569.  
18 Pick. 417.  
Same subject.

SECT. 3. If the defendant was an inhabitant of the state at the time of the service of the writ, but absent therefrom, and it does not appear, that he had actual notice of the suit, or that he had returned to the state, on suggestion of the fact, the court may continue the same, from time to time, not exceeding twice, unless some special cause; or, at their discretion, they may enter judgment on default.

SECT. 4. If a defendant was not an inhabitant of the state or within the same, at the time of such service, but had actual notice of the suit, the court may, in their discretion, order a continuance of the action, though he does not appear, in season to answer to the suit at the return term.

Bond to be given, if absent defendant be defaulted, not having received notice.  
1821, 59, § 7.

SECT. 5. When judgment in any personal action shall be rendered, as above provided in the third section, upon the default of an absent defendant, the plaintiff shall not take out execution thereon, within one year thereafter; unless he shall first give bond to the defendant, with one or more sufficient sureties, in a sum equal to double the amount of the judgment for damages and costs, with condition to repay the said amount to the defendant, if the judgment shall be reversed, upon a review to be brought by the original defendant, within one year after rendition of the original judgment, or as much of the amount first recovered, as shall be recovered back upon such review.

Bond to be left with the clerk.

SECT. 6. The bond above mentioned shall be deposited with the clerk of the court for the defendant's use, and the clerk shall decide on the sufficiency of the sureties; saving a right of appeal from his decision to any justice of the court, in which the judgment was rendered.

Right of review in one year, in such case.

SECT. 7. When judgment is so rendered upon default, as mentioned in the third section, the defendant shall be entitled to a review of the action, as of right, to be commenced and prosecuted in the same court, within one year next after the judgment was rendered, in the manner, provided in the one hundred and twenty fourth chapter.

Review, after a year, in certain cases.  
1821, 57, § 3.

SECT. 8. If such review of right has not been prosecuted, within one year as aforesaid, the defendant may, at any time within one year after he shall first have notice of the judgment, apply by petition to the court; in which the same was rendered, for a review of the action; and, if it shall appear to the court, that justice requires it, they may grant a review thereof, on such terms as they may deem reasonable.

No process to abate for circumstantial errors.

SECT. 9. No summons, writ, declaration, plea, process, judgment or other proceedings in courts of justice, shall be abated,

or reversed, for any kind of circumstantial errors or mis-  
 then the person and case may be rightly understood by the  
 r for want of form only, and which by law might have been  
 l.

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1821, 59, § 16.  
 13 Pick. 90.  
 20 Pick. 38.

10. All such errors, imperfections and defects, may, on  
 be amended by either party, on such terms as the court  
 ct.

Amendment of  
 such defects.  
 1821, 59, § 16.  
 3 Mass. 208.  
 6 Greenl. 307.  
 16 Maine, 263,  
 266, 282.

11. In all actions, where there are two or more defend-  
 plaintiff may amend the writ, by striking out the names of  
 more of the defendants, on paying him or them their costs  
 at time.

Amendment, if  
 too many def-  
 endants have  
 been sued.  
 1835, 178, § 4.

12. In any action on contract, express or implied, the  
 may, on motion, amend his writ, by inserting therein the  
 f any other person or persons, as defendants, and the court  
 er a copy of the writ, and the order of the court thereon  
 , to be served on such additional defendant, and his prop-  
 e attached in the same manner, as in case of original writs;  
 return of such service and attachment, if any shall be made,  
 tional defendant or defendants shall be deemed parties to  
 and may plead to the action accordingly; but they shall  
 able to any costs before service made on them, as aforeaaid.

Amendment, by  
 adding more  
 defendants, and  
 service on  
 them.  
 1835, 178, § 5.

13. In all actions of trespass, and trespass on the case,  
 aration shall be deemed equally good and valid, to all  
 nd purposes, whether the same shall be in form a declara-  
 -trespass, or trespass on the case.

Distinction be-  
 tween trespass  
 and case abol-  
 ished.  
 1835, 178, § 1.

14. The treasurer of the state, and treasurers of counties,  
 arishes and other corporations, may bring actions in their  
 nes, and capacities, as treasurers, on any bonds, notes or  
 urities, which shall have been given to them, or their pre-  
 , and prosecute any suits, commenced by their respective  
 sors, and pending, when they left such offices.

Treasurers may  
 bring actions in  
 their own  
 names.  
 1821, 59, § 26.

15. In all actions on any bond, or penal sum, for the  
 nce of any covenants or agreements, and in all actions of  
 ; the plaintiff may assign as many breaches, as he may  
 to which the defendant may answer generally, that he has  
 performed all said covenants, whether they are affirmative  
 ve.

Assignment of  
 breaches, in ac-  
 tions on bonds.  
 1830, 463, § 1.

16. In all cases, where real estate has been, or may be  
 y conveyed to any person, his heirs and assigns, with a  
 t, that the grantor was seized in fee of the same, and that  
 ee of all incumbrances at the time of such conveyance, the  
 ate then being under mortgage or other incumbrance, or  
 tor not being then seized of the same, the assignee of such  
 his executors or administrators, after having been evicted  
 estate, by the elder and better title of the mortgagee, his  
 assigns, may maintain an action of covenant broken against  
 grantor, on any of the covenants in such absolute deed, in  
 eir own names, and recover such damages as the grantee  
 he had been evicted and had brought the action in his  
 e; provided, he shall file in court at the first term, for the  
 e grantee, a release of the covenants in said grantee's  
 said assignee, and all causes of action on any of such cov-

Actions for  
 breach of cer-  
 tain covenants  
 in deeds, how  
 commenced.  
 1835, 183.



## CHAP. 115.

Grantee, after conveyance to a third person, not to release the covenants of his grantor.



Defendant may plead specially, or general issue with a brief statement. Counter brief statement. 1831, 514. 1 Fairf. 256. 2 Fairf. 157, 213. 13 Maine, 36. 16 Maine, 84, 422. 21 Pick. 404.

Justification, in a suit for a libel. 1833, 73.

Demurrer, and joinder.

Actions for penalties. 1821, 59, § 31.

Defendant may consent to be defaulted for a specified sum. Effect thereof. 1835, 165, § 6.

In case of demise of a joint promissor, the contract may be sued as several. 1821, 52, § 25.

SECT. 17. When a person has conveyed or shall convey an estate to another, covenanting in his deed, that he is seized in fee of the premises, and that they are free from all incumbrances, the time of the conveyance, and such grantee shall afterwards convey the same premises to a third person in fee, such grantee shall have no power to release the said covenants contained in the deed first mentioned, so as to bar or any way affect the right of such third person to maintain an action against the first grantor, for breach of said covenants of seizin, and freedom of the premises from incumbrance.

SECT. 18. The defendant may, in all cases, plead the general issue, which shall be joined by the plaintiff, and he may give in evidence any special matter in defence, when the issue is so joined to the country; provided, that he shall, at the same time file in the cause a brief statement of such special matter; to which the plaintiff may, within such time as the court shall direct, file a counter brief statement of any matter, on which he may rely, and give in evidence by way of avoidance of the matter contained in the brief statement of the defendant; or the defendant may, at election, plead such matter specially, after the general issue pleaded, in bar of the action, and by leave of court plead double.

SECT. 19. In every suit for writing and publishing a libel, shall be lawful for the defendant to give in evidence on the truth thereof, the truth of the matter charged as libelous; and the truth of such fact, being established, shall be a justification, unless it shall appear, that the matter charged as libelous, originated from corrupt or malicious motives.

SECT. 20. When the defendant does not deny the fact stated in the declaration, he may file a general demurrer to the same; and, in any stage of pleading, either party may demur, and the demurrer shall be joined.

SECT. 21. All penalties may be recovered by action of debt where no other form of action or proceeding is prescribed in the statute, imposing such penalties.

SECT. 22. In any action founded on judgment or contract, the defendant may offer, and consent in writing to be defaulted, and that judgment may be entered against him, for a specified sum of damages; and the same shall be entered on record, and the time when the offer was made: and, if the plaintiff shall proceed to trial, and recover no greater sum for his debt or damages, up to the time when the offer was made, the defendant shall recover his costs of the plaintiff, from the time of such offer, up to the time of trial; and such costs shall be set off against the sum so offered, and judgment shall be rendered, and execution issued for the balance for either party, which way soever the same may be.

SECT. 23. The goods and estate of each deceased debtor in every joint contract, express or implied, or in any judgment on any contract, shall be liable in the hands of his executor or administrator for payment thereof, in the same manner as in case of a contract, joint and several; and the creditor shall have the same remedy against any of the survivors, or against the executor or administrator, as on a joint and several contract.

**SECT. 24.** When there are mutual debts or demands, between the plaintiff and defendant in any action, one demand may be set off against the other, as provided in the following sections.

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Mutual demands may be set off.

1821, 59, § 19.  
15 Maine, 268.

Time of filing set off. Notice to the plaintiff.  
14 Pick. 151.

**SECT. 25.** The defendant shall file a statement of his demand, on the first day of the term of the court, at which the writ is made returnable, and the clerk shall enter on the same the day, when it was filed, and the defendant shall also, on the same day, give written notice thereof to the plaintiff or his counsel, if either is attending court.

**SECT. 26.** The demand of the defendant shall be as certain in substance, as would be required in a declaration, and the court may allow amendments thereof, when deemed proper.

Demand in set off, how described.  
6 Greenl. 240.

**SECT. 27.** No demand shall be set off, unless it is founded upon a judgment or contract; but the contract may be either express or implied.

Must be founded on judgment or contract.  
1823, 228.  
4 Pick. 63.

**SECT. 28.** No demands shall be set off, unless for the price of real or personal estate sold, or for money paid, money had and received, or for services done, or unless it be for a sum liquidated, or one that may be ascertained by calculation.

What demands may be set off.  
17 Mass. 66.

**SECT. 29.** No demand shall be set off, unless it was originally payable to the defendant, in his own right, except as hereinafter is provided.

Must have been originally payable to defendant.

**SECT. 30.** Any demand, which has been assigned to the defendant, with notice to the plaintiff of the assignment, before the action was commenced, may be set off in like manner, as if it had been originally payable to the defendant; if the plaintiff shall, at any time, have previously agreed to receive it in payment, or part payment of his demand, or to pay the same to the defendant, and not otherwise.

Case, in which a demand assigned to defendant may be set off.  
8 Mass. 418.  
5 Pick. 312.

**SECT. 31.** If the demand, set off, is founded on a bond, or other contract having a penalty, no more shall be set off than the sum equitably due.

Amount equitably due on a bond may be set off.

**SECT. 32.** The set off shall be allowed in all actions founded on demands, which could themselves be the subject of set off according to law, and in no others.

In what actions, set off may be filed.  
17 Mass. 178.

**SECT. 33.** If there are several plaintiffs, the demand, set off, shall be due from them all jointly; if there are several defendants, the demand, set off, shall be due to them all jointly, except as is provided in the following section.

Set offs, where there are several plaintiffs or defendants.  
11 Mass. 139.  
15 Maine, 268.  
1 Metc. 80.

**SECT. 34.** When the person, with whom a contract is made, has a dormant partner, and a suit is brought on such contract, by or against the partners jointly, any debt, due to or from the person, with whom the contract was made, may be set off in like manner, as if such dormant partner had not been joined in the suit.

Set off, where there is a dormant partner.  
6 Pick. 352.

**SECT. 35.** If the demand, on which the action is brought, has been assigned, and the defendant had notice of the assignment, he shall not set off any demand, that he may have acquired against the original creditor after such notice.

If plaintiff's demand have been assigned, what may be set off.  
8 Mass. 451.  
12 Mass. 193.  
14 Mass. 291.

**SECT. 36.** When an action is brought by one person in trust, or for the use of another, the defendant may set off any demand against the person, for whose use or benefit the action is brought, in like manner, as if that person were the plaintiff in the suit.

If action is brought by one person, in trust for another, what may be set off.  
8 Pick. 342.

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What may be set off in actions brought by administrators.

2 Mass. 498. 3 Pick. 452.

Recovery of the balance due to the defendant, in such case.

If the estate be insolvent, judgment not to be rendered therefor.

3 Mass. 498.

What may be set off, in actions against administrators.

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In actions by administrators and others in trust, their own proper debts shall not be set off.

Issue, in cases of set off.

Plaintiff's defence against such set off.

Statute of limitations applicable to set offs.

No costs, if nothing be due to either party.

Judgment, and costs, if balance be found due to the defendant. 1821, 59, § 19.

Set offs, before municipal and police courts, and justices. 1821, 59, § 19.

SECT. 37. In actions by executors and administrators, demands against their testators or intestates, which belonged to the defendant at the time of their death, may be set off in the same manner if the action had been brought by the deceased.

SECT. 38. When, upon such set off against an executor or administrator, a balance shall be found due to the defendant, judgment therefor shall be in the same form, and have the same effect, as if the suit had been originally commenced by the defendant; except, as stated in the following section.

SECT. 39. When the estate of the deceased is insolvent, judgment shall be rendered in favor of the defendant for the balance found due to him; but the same shall be certified by the clerk of the court, to be the balance due from the estate of the deceased, and the same shall be laid before the commissioners on such estate in like manner as other claims of creditors.

SECT. 40. In actions against executors and administrators, trustees and others, in their representative character, the defendant may set off demands belonging to their testators or intestates, or to whom they represent, in the same manner, as the persons represented would have been entitled to set off the same, in an action against themselves.

SECT. 41. In actions, brought by or against executors, administrators or trustees, or others in their representative character, demand shall be set off, that is due to or from such executors, administrators or trustees or others, in their own right.

SECT. 42. All cases of set off may be tried upon the issue joined without any further plea; and in all actions, except assumpsit, when an issue to the country is not otherwise formed, the defendant may plead, that he does not owe the sum demanded by the plaintiff, which shall be deemed a good plea or general issue, for the purpose of trying the merits of the cause.

SECT. 43. The plaintiff shall be entitled to every ground of defence against such set off, of which he might have availed himself, by any form of pleading, in an action brought against him on the same demand.

SECT. 44. The statute limiting personal actions, if applicable to the set off, shall be applied in the same manner, as if an action thereon had been commenced at the time, when the plaintiff's action was commenced.

SECT. 45. If the jury find no balance due to either party, judgment shall be entered thereon without costs to either; if a balance is found due to the plaintiff, he shall have judgment therefor.

SECT. 46. When a balance is found due from the plaintiff, judgment shall be rendered therefor in favor of the defendant, with costs; but no such judgment shall be rendered against the plaintiff, where the demand, for which the action was brought, had been assigned before the commencement of the action; nor for any balance due from any other person, than the plaintiff.

SECT. 47. In actions in a municipal or police court, and before a justice of the peace, similar proceedings shall be had in respect to set offs, as those before prescribed; the demand in set off to be filed on the return day of the writ: provided, that in no case shall judgment

ment be rendered for the defendant for more than twenty dollars, **CHAP. 115.**  
exclusive of costs of suit.

**SECT. 48.** After a demand has been filed in set off, the plaintiff shall not be allowed to discontinue his action, unless by consent of the defendant.

**SECT. 49.** Whenever a cause is at issue, and it shall appear, that the trial will require an investigation of accounts, or an examination of vouchers, the court may appoint, by consent of parties, one or more auditors to hear the parties, and examine the vouchers and proof, and to state the accounts and make a report thereof to the court.

**SECT. 50.** The auditors shall give notice to the parties, of the time and place of hearing them, and may adjourn, as may be found necessary.

**SECT. 51.** If there is more than one auditor, all shall hear the parties, but a majority may make the report; in which it shall be stated, whether all attended the hearing or not.

**SECT. 52.** Witnesses may be summoned and compelled to attend before the auditors, as before referees, and may be sworn by any such auditor.

**SECT. 53.** The court may discharge the auditors, and appoint others, or may recommit their report for revision.

**SECT. 54.** If there is no legal objection to the report of the auditors, it may be used by either party as evidence, on the trial of the cause before the jury; but shall be open to be impeached or disproved by other evidence.

**SECT. 55.** The court shall allow reasonable compensation to the auditors, to be paid by the plaintiff, and taxed in his bill of costs, if he prevail in the suit.

**SECT. 56.** When the plaintiff, in any stage of the cause, shall become nonsuit, or discontinue his suit, the defendant shall recover his costs; and in all actions, the party prevailing shall be entitled to his legal costs.

**SECT. 57.** In actions of account, when any person, against whom judgment shall be rendered, that he shall account, shall unreasonably delay or refuse to appear at the time and place, appointed by the auditors, who have been appointed by the court, or, after appearing, shall refuse or neglect to render an account, the auditors shall certify such refusal or neglect; and the court shall cause the damages to be assessed by a jury, and judgment for the same on the verdict, or may enter a default and judgment thereon.

**SECT. 58.** When venires for jurors are returned to court, the clerk shall prepare, at the commencement of each term of the court, separate alphabetical lists of the names of the several persons, returned as traverse jurors; and the court at which such jurors attend, in empanneling the traverse jurors, shall cause the names of the first two persons, who shall attend, to be called, who shall be first sworn, and then the others in succession, as they shall be named on the list, and in such divisions as the court may direct, or all at the same time; and the first twelve shall compose the first jury, and the next twelve, on the same list, shall be empannelled and sworn in like manner, and shall compose the second jury.

Plaintiff not to discontinue, after set off is filed.

11 Mass. 206.

Court may appoint auditors, in certain cases.

1821, 59, § 25.

1826, 347, § 1.

11 Pick. 359.

1 Metc. 216.

Auditors to notify parties.

Majority may decide, after hearing by all.

Witnesses may be compelled to appear.

1826, 347, § 1.

Discharge of auditors.

4 Pick. 283.

Report may be read in evidence.

1821, 59, § 19.

1826, 347, § 1.

11 Pick. 359.

Compensation.

1821, 59, § 19.

1826, 347, § 1.

Costs to prevailing party.

1821, 59, § 17.

13 Maine, 255.

1 Pick. 275,

452.

Proceedings, in actions of account.

1821, 59, § 24.

Arrangement and empanneling of jurors.

1821, 84, § 10,

11.

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Supernumeraries. Transferring, or excusing jurors. 1821, 84, § 11.

Oath of traverse jurors. 1821, 84, § 12.

Choice of foreman. 1821, 84, § 13.

Talesmen. 1821, 84, § 8.

How returned. 1821, 84, § 8.

New jurors may be summoned in term time, in certain cases. 1821, 84, § 8, 14.

Challenge of jurors. 1821, 84, § 9. 6 Greenl. 307.

Manner of finding verdicts. 1821, 84, § 15.

Proceedings, if jury do not agree. 1821, 84, § 15.

SECT. 59. If there are supernumerary jurors, they may be excused from time to time, till wanted; and they may be placed on either jury, as occasion may require; and jurors may be transferred from one jury to the other, when the convenience of business may require it; and, for good reason, any juror may be excused.

SECT. 60. The following shall be the form of the oath, administered to traverse jurors, in civil causes: "You and each of you swear, that in all causes betwixt party and party, that shall be committed to you, you will give a true verdict therein, according to the law and the evidence given you. So help you God;" and, when a juror is conscientiously scrupulous of taking an oath, the word "affirm" shall be used, instead of "swear," and the words, "that you do under the pains and penalties of perjury," instead of "so help you God."

SECT. 61. Each jury shall retire, after having been thus empaneled and sworn, and choose their foreman, by ballot, or make their choice upon retiring with the first cause, with which they shall be charged; and, whenever a foreman is absent, or excused from service, a new foreman shall be chosen, as aforesaid.

SECT. 62. When, by reason of challenge or other cause, a sufficient number of jurors, duly drawn and summoned, cannot be obtained for the trial of any cause, the court shall cause jurors to be returned from the by standers, or from the county at large, to complete the panel; provided, that there shall be on the jury not less than seven jurors, drawn and returned as before provided.

SECT. 63. Such jurors shall be returned by the sheriff, or his deputy, or a coroner, or such other disinterested person, as the court may appoint.

SECT. 64. The court may, when circumstances render it measure expedient, in term time, issue venires for as many jurors, as may be wanted; to be drawn, notified and returned, forthwith, or on a day appointed: and the court may, also, when in any county the business requires a protracted session, during the term, excuse all or any of the jurors originally returned, and issue venires for as many new jurors, as may be necessary to supply their places; who shall be drawn and notified to attend at such time, as the court may direct.

SECT. 65. The court, on motion of either party in a suit, may examine, on oath, any person called as a juror therein, whether he is related to either party, or has given or formed any opinion, or is sensible of any bias, prejudice, or particular interest in the cause; and, if it shall appear from his answers, or from any competent evidence, introduced by the party objecting to the juror, that he does not stand indifferent in the cause, another juror shall be called, and placed in his stead for the trial of the cause.

SECT. 66. The traverse jury may, in all cases, find a special or general verdict, subject to the opinion of the court on a case agreed by the parties and reserved, or on the facts, as reported by the judge presiding at the trial.

SECT. 67. When a jury, not having agreed, return into court, stating the fact, the judge may, in his discretion, explain any questions of law, if proposed to him, or re-state any particular testimony,

**and** send them out again for further consideration ; but they shall **not** be sent out, a third time, in consequence of their disagreement, **unless** on account of some difficulties, not stated when they first **came** into court. CHAP. 115.

**SECT. 68.** In prosecutions for the recovery of any sum of money or other thing forfeited, it shall not be a cause of challenge to any juror, that he is liable to pay taxes in any county, town or plantation, which may be benefited by the recovery. What interest will not disqualify a juror. 5 Mass. 90.

**SECT. 69.** If a party knows of any objection to a juror, in season to propose it before trial, and omits so to do, he shall not afterwards be allowed to make the same objection ; unless by leave of court, for special reasons. Objection to a juror, when to be made. 10 Pick. 477.

**SECT. 70.** No irregularity in the venires, or drawing, summoning, returning or empanneling jurors, shall be sufficient to set aside a verdict : unless the party, making the objection, was injured by the irregularity ; or unless the objection was made before the return of the verdict. Irregularities in constituting juries, not to affect a verdict. 8 Greenl. 42.

**SECT. 71.** The clerks of the several courts, and any justice of the peace, may issue summonses for witnesses to attend before such courts, to give evidence concerning any matters there depending. Who may issue summonses for witnesses. 1821, 59, § 38.

**SECT. 72.** No person, who believes in the existence of a supreme being, shall be adjudged an incompetent or incredible witness in any judicial court, or in the course of judicial proceedings, on account of his opinions in matters of religion ; nor shall such opinions be made a subject of investigation or inquiry. Competency, how far affected, by religious belief. 1833, 58.

**SECT. 73.** In the administration of oaths, the deponent shall hold up his hand, unless he is a person who believes that an oath is not binding, if it is not taken in his accustomed manner. Manner of administering oaths. 1821, 59, § 29.

**SECT. 74.** Every person, conscientiously scrupulous of taking an oath, and who, on any lawful occasion, is required to take one, shall make affirmation, as follows : "I do affirm, under the pains and penalties of perjury," which shall be deemed of the same force and effect, as an oath. Persons, conscientiously scrupulous, may affirm. 1821, 55, § 9.

**SECT. 75.** In all suits at law, wherein any county, town, plantation, parish, school district, public corporation, charitable, religious or literary incorporated society, or any mutual fire insurance company, may be a party, or interested in the event of the suit, any inhabitant or member of any such corporation shall be admitted, as a competent witness ; provided, he has no other interest therein, than as such inhabitant or member. Members of certain corporations, competent witnesses, where such corporations are interested. 1821, 87. 1832, 3. 14 Maine, 201. 3 Pick. 356, 462. 8 Pick. 518.

**SECT. 76.** If either party in a cause, in which a verdict is returned, shall, during the same term of the court, before or after the trial, give to any of the jurors, who shall try the cause, any thing by way of treat, or gratuity, or purposely introduce among the papers in the case, which are delivered to the jury, when they retire with the cause, any papers, which have any connection with it, but which were not offered in evidence, the court, on motion of the adverse party, may set aside the verdict, and order a new trial. No improper influence to be exerted on jurors. 1821, 84, § 15. 6 Greenl. 141.

**SECT. 77.** In all actions of replevin, whenever the jury shall find the property of part of the goods and chattels, replevied, to be in the plaintiff, and of the residue to be in the defendant, they shall also, without reference to the estimated value in the replevin Value of property replevied to be found by the jury in certain cases. 1822, 186, § 2.

**CHAP. 115.** bond, find and certify in their verdict, the value of the part belonging to the plaintiff, as it was at the time it was replevied; and, such value shall not exceed twenty dollars, the plaintiff shall recover for costs, only one quarter part of such value.

Proceedings, and judgment in trials on debtors' and other bonds. 1830, 463, § 1. 1831, 497. 1839, 366, § 1.

**SECT. 78.** In any action, pending on the eighth day of February eighteen hundred and thirty nine, or, that is now, or shall hereafter be pending in any judicial court, or before any justice of the peace, on a bond given by any execution debtor, or by any person arrested on a warrant of distress, to obtain a discharge from arrest or imprisonment, if it shall appear, that prior to a breach of any of the conditions of the same bond, the principal in such bond has been allowed, by two justices of the peace, quorum unus, or two justices of the peace and quorum, or a justice of the peace, and a judge of any municipal court, to take, and had taken, before such justices, the poor debtor's oath, after notice of the intentions of such debtor, to disclose the state of his affairs, and take such oath, issued by a justice of the peace upon the application of such debtor, by written notice, signed by the debtor himself and served upon the creditor named in the bond, or upon the attorney of such creditor, the defendant shall have a right to have such action tried by a jury, who shall find and assess the damages, if any, the plaintiff has sustained; or if, in their opinion, he has not sustained any damages, they may return a verdict for the defendant, notwithstanding there may have been, in law, a breach of the conditions of the bond; and, in such action, the plaintiff may introduce any proper evidence, tending to shew, that the surety or sureties of such debtor had, in his or their hands and possession, at the time of the administration of said oath to the debtor, personal property, money, debts, credits or real estate, belonging to such debtor, sufficient in whole or in part to pay the execution referred to in the bond; and if the verdict be for the plaintiff, judgment shall be rendered thereon, without regard to the penalty of the bond. And, in any such action, on trial, before a municipal court, or a justice of the peace, similar proceedings shall be had, as to the question of damages, and the mode of entering up judgment; provided, that in no such case shall the jury, or the municipal court, or justice of the peace, give the plaintiff a larger sum in damages, than the amount of the debt and cost, mentioned in the execution, with interest thereon, and officer's fees. And in all actions upon any bond or penal sum, where the conditions of the same are different from those above mentioned, and in all actions in the supreme judicial court, on a recognizance, entered into in the district court, to prosecute an appeal with effect, if the jury shall find that any of the conditions of such bond or penal sum have been broken, they shall estimate the damages the plaintiff has sustained; and judgment thereupon shall be entered for the penal sum aforesaid, and execution shall issue for the damages assessed and costs.

Interest allowable, in actions of debt on judgment. 1821, 59, § 36. No arrest of judgment. 1835, 178, § 6.

**SECT. 79.** In an action of debt on a judgment of any court of record, lawful interest shall be allowed, as well on the costs as the damages, or the balance thereof due.

**SECT. 80.** No motion in arrest of judgment shall be sustained in the supreme judicial court, or district court, in any civil action.

**SECT. 81.** In case of the death of either party in an action, pending in the supreme judicial court or district court, or before a municipal court, or any justice of the peace, the executor or administrator of the deceased, if the cause of action survive, may become a party to such action, such death being suggested on the record; and may prosecute or defend the same to final judgment: and the surviving party may cause the executor or administrator of the deceased party, to be served with a notice from the court, fourteen days before the sitting of the same, where the notice is made returnable, to appear and prosecute, or defend such action, as the case may be; and, upon the refusal or neglect of such executor or administrator, so to appear and become a party to the suit, the court may enter up judgment upon the nonsuit or default, as the case may be, in the form prescribed in chapter, one hundred and twenty.

**SECT. 82.** If any action or suit be brought by an unmarried woman, either alone or jointly with others, and she be married before final judgment, her husband may, on his own motion, be admitted as a party, to prosecute the suit with her, and with the other plaintiffs, if there be any, in like manner as if he had originally joined in the suit.

**SECT. 83.** When an appellant or appellee, in any action, wherein judgment has been rendered upon an issue in law, or case stated by the parties, by the district court, and, from which judgment, an appeal has been claimed and granted, shall die before the sitting of the court appealed to, the surviving party may enter the appeal; and, after giving notice to the executor or administrator of the deceased party, the court may render the proper judgment; affirming the judgment of the district court, or grant a new trial.

**SECT. 84.** When a general verdict is entered, for the plaintiff in any civil action, in which some of the counts in the writ are bad, and any one of them is good, or in any suit in which there is a wrong joinder of counts, no objection having been made thereto by plea, or motion in writing, before the cause is committed to the jury, the judgment, for that reason, shall not be a subject of reversal upon a writ of error.

**SECT. 85.** In actions tried before a municipal court, or a justice of the peace, if the plaintiff shall appeal from a judgment in his favor, and, in the district court, shall not recover a greater sum for damages, than he recovered by the first judgment, he shall not be entitled for his costs of the whole suit, to more than a quarter part of the sum, finally recovered for damages.

**SECT. 86.** If, during the pendency of any action, either party shall become insane, the action may be prosecuted or defended by his guardian, in like manner as if it had been commenced after the appointment of the guardian; or the court may appoint a guardian for the suit, as the case may require.

**SECT. 87.** When, in any action, a plaintiff is by law entitled to recover double costs, the fees paid for witnesses, depositions, copies and other evidence, shall be taxed and recovered singly, and the remainder only of the taxable costs shall be doubled; and the same rule shall apply, when treble costs are recovered.

**SECT. 88.** On application for a writ of certiorari, mandamus, or

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Proceedings, in case of the death of a party to an action pending. 1821, 52, § 22. 3 Mass. 296, 321.

Proceedings, upon marriage of a feme sole plaintiff.

Proceedings, if a party die, before entry of an appeal.

Judgment on a general verdict, if any count be good. 1830, 463, § 3.

Costs, if plaintiff appeal from a justice's judgment, and do not increase the damages. 4 Greenl. 66.

Guardian may appear for a party, who has become insane.

Meaning of "double," or "treble costs."

Costs for respondents, on unsuccessful



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application for certain writs and processes.

Costs to be paid, before bringing a new suit, after non-suit or discontinuance.

Liability for costs, of an individual who sues in the name of the state.

State liable for costs, if such action be for its benefit.

State's attorney to tax no travel.

Costs, if a plaintiff bring divers actions at the same court, which might be joined. 1821, 59, § 19. 1822, 184. 10 Mass. 175. 9 Pick. 533. 17 Pick. 263.

Taxation of fees for travel. 1821, 105, § 1. 1835, 165, § 4.

Taxation of fees for attendance in defaulted cases. 1835, 165, § 5.

Costs not taxable in a suit on a judgment, where execution might issue. Proviso, 1835, 178, § 2.

Costs for travel of a corporation.

quo warranto, on behalf of any private person, or for any like process, the court, in their discretion, may allow costs to any person notified, and appearing as a respondent, and issue execution against the applicant.

SECT. 89. After a judgment for costs has been rendered against a plaintiff, on nonsuit or discontinuance, and a second suit for the same cause shall be brought, before the costs of the former suit shall have been paid, the court shall, on the same being made to appear, stay all proceedings, until such costs shall be paid; and may dismiss the suit, unless they are paid at such time as the court shall appoint.

SECT. 90. When any suit is brought in the name of the state but for the use and benefit of any private person, his name and place of residence shall be indorsed on the writ, and, if the suit not maintained, judgment for the defendant's costs shall be rendered against such person, and execution issued in like manner, if he were the plaintiff on record.

SECT. 91. In any civil suit, instituted by the state, and for the use and benefit of the state, the state shall be liable for the defendant's costs, and judgment shall be rendered for them against the state, and the treasurer of the county, in which the trial is had, shall pay the amount to the defendant, on his production of a certified copy of the judgment, and the same shall be allowed to the treasurer, in his account with the state.

SECT. 92. When costs are recovered by the state in any civil suit, no fees shall be taxed for the travel of the attorney general, or any other attorney for the state.

SECT. 93. When a plaintiff shall, at the same court, and at the same term, bring divers actions against the same party, which might have been joined in one, or shall bring more than one suit upon a joint and several contract, he shall recover costs in only one of such actions, unless the court shall certify, that there was good cause for commencing them.

SECT. 94. The costs for the plaintiff's travel shall be taxed according to his or his attorney's distance from the place of trial, whichever is nearer, whether the plaintiff is payee, or indorsee; but no more than for forty miles' distance from the court, shall ever be allowed, unless the plaintiff himself shall actually travel more than that distance.

SECT. 95. In all actions, if the defendant is defaulted before the jury shall be empaneled and called to try the cause, the plaintiff shall tax only six days' attendance, except as provided in section, one hundred; and, if defaulted after the jury are empaneled and called, the cost may be restricted, as the court shall direct.

SECT. 96. No costs shall be allowed the plaintiff, in an action upon a judgment of any court, or justice of the peace, on which an execution might, at the time of commencing such action, have been issued and duly served on the judgment debtor; provided, this section shall not apply to a trustee process, founded on such judgment.

SECT. 97. When an aggregate corporation is entitled to costs, the travel shall be computed from the place where it is situated, if it is local in its nature; otherwise, from the place where its

*business* is usually transacted, not exceeding forty miles travel; **CHAP. 115.**  
*unless* the agent of such corporation shall travel a greater distance  
*to attend* the court.

**SECT. 98.** Nothing in this chapter shall take away or control Court may control costs, in certain cases.  
*the power* of the court, to require payment of costs, or withhold  
*and refuse* them, as the condition of an amendment or continuance.

**SECT. 99.** In actions on contract, in which an account is filed Costs, in cases of set off. 5 Greenl. 74.  
*in set off*, although the damages, found for the plaintiff, shall not  
*exceed* twenty dollars, he shall be entitled to full costs; provided,  
*the jury* shall certify, in their verdict, that the damages were reduced  
*as low as* that sum, by means of the amount allowed by them, on  
*account of* said set off, and as due upon it.

**SECT. 100.** All actions, entered at any previous term, in the Trial docket, and costs in actions for trial. 1838, 336, § 1.  
*supreme judicial court* or district court, shall be called over by the  
*clerk*, on the first day of each term; and those, which are not then  
*defaulted*, but further answered to, shall be entered on a trial docket,  
*made by* the clerk, and travel and attendance shall be taxed in  
*such action*, until the defendant shall allow the same to be disposed  
*of*, unless the court shall otherwise direct; but no more than ten  
*days' attendance*, at any one term, shall be taxed, in any action, in  
*any case*.

**SECT. 101.** When a motion is made and filed, that a verdict Proceedings, on motion to set aside a verdict.  
*may be set aside*, as being against law, or the direction of the court,  
*or against evidence*, the whole evidence shall be drawn up in the  
*form of a report*, and signed by the presiding judge; and, if the  
*motion shall be founded* on any alleged cause, other than the rul-  
*ings and instructions* of the judge to the jury, the evidence, as to  
*the facts stated* in the motion, shall be heard, examined and reported  
*by the judge*; and, in either case, the action shall be continued, to  
*be heard on* the motion before the whole court.

**SECT. 102.** Execution may be issued on any judgment in the When executions may issue, and when returnable. 1821, 60, § 3. 6 Mass. 20. 10 Mass. 356. 8 Greenl. 207.  
*supreme judicial court* or district court, after the expiration of twenty  
*four hours*, after the same was rendered; and shall be made return-  
*able within* three months.

**SECT. 103.** Executions issued by a justice of the peace shall  
*be made returnable* in three months, from the day they were issued.

**SECT. 104.** No first execution shall be issued after the expira-  
*tion of one year*, from the time judgment was entered; except in  
*the case provided for*, in the fifth section of this chapter.

**SECT. 105.** An alias or pluries execution may be issued, within  
*three years next after* the day, on which the last preceding execu-  
*tion was returnable*, and not afterwards.

**SECT. 106.** If the creditor, in the cases mentioned in the two Justice executions, when returnable. 1821, 60, § 3. To issue within one year after judgment. 1821, 60, § 3. 5 Mass. 373. May be renewed within three years. 1821, 60, § 3. When scire facias is necessary. 1821, 60, § 3.  
*preceding sections*, shall neglect to sue out execution, within the  
*times therein prescribed*, he may sue out a writ of scire facias  
*against the debtor*, to show cause why execution of the judgment  
*should not be done*; and if, after due notice, no sufficient cause be  
*shown*, the court shall award execution for the amount due on the  
*judgment*.

**SECT. 107.** On all executions, issued on judgments in civil Interest to be collected on executions. 1836, 250.  
*actions, or acknowledgments of debts*, lawful interest shall be col-

**CHAP. 115.**

Courts not to be held on certain days.  
1836, 232, § 1.

In actions of trespass, court or jury to decide, whether the trespass was wilful.  
1833, 51.

Damages on dishonored bills, payable out of the state.  
1821, 88, § 1.

Damages on bills payable in the state.  
1821, 88, § 2.

Appointment of surveyor in certain cases.

Subsequent attaching creditor, may petition for leave to defend a previous suit.  
1831, 508, § 2.  
5 Pick. 410.  
7 Pick. 512.  
8 Pick. 165.  
12 Pick. 199.  
Manner of petitioning.

lected by the officer, serving the execution, from the time judgment was rendered, or the debt became payable; and the clerk, or justice shall vary the form of executions, so as to embrace such interests.

**SECT. 108.** No court shall be held for trial of civil causes, on the fourth day of July, second Monday in September, nor any day designated, in this state, for the choice of electors of president and vice president of the United States, or for the annual fast or thanksgiving.

**SECT. 109.** In all actions of trespass on property, it shall be the duty of the court or magistrate, or court and jury, to inquire and determine, whether the trespass was committed wilfully; and if such is found to be the fact, a record shall be made of that fact, and, when execution is issued on the judgment in the case, a memorandum shall be made on the margin of the execution, that such judgment was rendered for a trespass committed wilfully.

**SECT. 110.** When an action is brought on a bill of exchange drawn or indorsed in this state, and payable in any place out of the state, but within the United States, and, being protested for non-acceptance or non-payment, the holder, in an action against the acceptor, drawer or indorser, shall recover not only the contents of the bill and interest, but in addition thereto shall recover damages at the rate of three per cent. on the amount of the bill, if it be payable in either of the states of New Hampshire, Massachusetts, Vermont, Connecticut, Rhode Island or New York; and if in New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia or the district of Columbia, at the rate of six per cent; and, if in any other state, at the rate of nine per cent.

**SECT. 111.** If a bill of exchange be drawn, accepted or indorsed, in this state, for one hundred dollars or more, and payable in this state, at a place seventy five miles distant from the place where drawn, the damages against the acceptor, drawer or indorser, over and above the contents of the bill and interest, shall be one per cent. on its amount.

**SECT. 112.** Any court may appoint a surveyor to run lines, and make plans of lands, demanded in a real or mixed action, when such a measure may be deemed useful in the trial of such cause; and, when such surveyor is prevented by force, menaces or fear, from performing the duties assigned him, the court, in which the cause is pending, may issue a warrant to the sheriff, commanding him, with suitable aid, to cause such opposition to the surveyor, in the execution of his duties, to be prevented; and, in the execution of such warrant, he may exercise all the power, appertaining to his office as sheriff; and all persons refusing their aid, when called for by him, shall be liable to the same penalties, as in other cases.

**SECT. 113.** In all cases, where the same property has been attached on mesne process in two or more suits, which are now pending or may be commenced, the plaintiff in any suit, after that in which the first attachment shall have been made, may petition the court in which such suits are pending, for leave to defend against such first suit, in like manner, as the party, therein sued, could or might have done.

**SECT. 114.** The party, so petitioning, shall set forth, in his

petition, the facts on which he relies, and make oath to the truth of the same, or that he verily believes them to be true; and the court, in their discretion, may grant the prayer of the petition, or not, as they may judge proper. **CHAP. 115.**  
1831, 508, § 3.

**SECT. 115.** If the court shall admit the petitioner to defend against such prior suit, he shall give bond, or enter into recognizance with sufficient surety, in such sum, as the court shall order, to pay to the plaintiff in such previous suit, all such costs and damages, as the court shall adjudge and decree to have been occasioned to the plaintiff, by such defence. Bond to be given, if he be allowed to defend. 1831, 508, § 4. 1 Metc. 39.

**SECT. 116.** It shall be entered on record, that the petitioner is admitted to defend against the prior action, as aforesaid. Entry on the record. 1831, 508, § 4.

**SECT. 117.** In case a recognizance has been entered into, and if the petitioner shall fail in his defence of such action, the court shall award execution on the recognizance, in favor of the plaintiff therein against the petitioner, and proceed to enter judgment in the original suit between the parties, as though such defence had not been made. Proceedings, if petitioner fail in his defence. 1831, 508, § 4.

**SECT. 118.** If the petitioner shall prevail in said defence, by verdict or otherwise, the court shall render judgment thereon, and award execution to the petitioner, for his reasonable costs; and such judgment shall be rendered for costs, if any, to the party sued in such action, as the court may direct. Proceedings, and costs, if petitioner prevail. 1831, 508, § 5. 3 Fairf. 502.

**SECT. 119.** If it shall appear, by the verdict or otherwise, that the plaintiff made his attachment with intent to defraud or delay other creditors of the defendant, or that there was collusion between the plaintiff and defendant, for the purpose of defrauding or delaying such other creditors, such attachment shall be void. If first attachment were fraudulent, it shall be void. 1831, 508, § 6.

**SECT. 120.** No action brought by any public officer, in his official capacity, shall abate, by reason of the death, resignation, removal, or expiration of the term of office of such plaintiff; but such action may be prosecuted by the successors in office of such plaintiff, to the uses for which such action was originally commenced; and the court, before which any such action may be pending, may order such amendments of the process, and such notices to said successors, as may be necessary, to carry into effect the provisions of this section. Actions brought by public officers not to abate by their vacating their offices.

## CHAPTER 116.

### OF JUSTICES OF THE PEACE, AND THEIR POWER IN CIVIL CASES, AND PROCEEDINGS THEREIN.

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| <p><b>SECT. 1, 2.</b> Civil jurisdiction of justices of the peace.</p> <p>3. Proceedings, if title to real estate be in question.</p> <p>4. Recognizance to enter the action in the district court.</p> <p>5. Consequence of neglect.</p> <p>6. Form and service of justice writs.</p> | <p><b>SECT. 7.</b> Default and judgment on non appearance of defendant.</p> <p>8. Costs for defendant, if he recover.</p> <p>9. Right of appeal, and effect thereof.</p> <p>10. Appellant to recognize with sureties.</p> <p>11. To produce papers in the district court.</p> |
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- CHAP. 116.** **SECT. 12.** Justices may issue subpoenas for witnesses.
13. May adjourn their courts.
14. Proceedings, if a justice be absent at the time appointed for holding a court.
15. Justices not to be of counsel.
16. May issue scire facias against administrators for waste, and against bail.
17. May issue writs into other counties, in certain cases.
18. Service of writs of scire facias.
19. Justice's records. Proceedings, in case of his death.
20. Records may be transcribed by another justice in certain cases.
21. Copy of such transcription to be legal evidence.
- SECT. 22.** Justice may issue execution such transcribed record.
23. Justice removing from the state to deposit his records with clerk of the courts.
24. Administrator of deceased justice so to deposit them.
25. Penalty for neglect, in either case.
26. Duty of the clerk in such cases.
27. Proceedings, if justice die or move, not having completed records.
28. Certain powers of justices continued, after expiration of commissions.
29. Place where justice writs may be returnable.
30. All trials to be upon the general issue.

Civil jurisdiction of justices of the peace. 1821, 76, § 8. 1826, 324, § 2.

**SECTION 1.** Every justice of the peace, except those residing in any city or town, within which a municipal or police court now is, or may be established, and the judge of such court is not interested, shall have power to hold a court within his county, and shall have original and exclusive jurisdiction of all civil actions, where the debt or damages demanded do not exceed twenty dollars; excepting real actions, actions of trespass on real estate, actions for disturbance of a right of way, or of any other easement, and all other actions, where the title to real estate, according to the pleadings, or the brief statement, filed in the case by either party, may be in question: and in prosecutions for penalties, he may have jurisdiction, if otherwise entitled, notwithstanding his town may be interested in the penalty.

Same subject.

**SECT. 2.** But in the personal actions, mentioned in the exception contained in the preceding section, when the sum demanded does not exceed twenty dollars, a justice of the peace shall have original jurisdiction, concurrently with the district court.

Proceedings, if title to real estate be in question. 1821, 76, § 11. 5 Mass. 125. 7 Mass. 385. 3 Greenl. 256. 4 Pick. 169. 10 Pick. 504. 17 Pick. 218.

**SECT. 3.** When it shall appear, in either of the ways before mentioned, that the title to real estate is concerned or brought in question, the case shall, at the request of either party, be removed to the district court, to be there tried and determined in the same manner, as if it had been originally commenced in that court.

Recognizance, to enter the action in the district court. 1821, 76, § 11.

**SECT. 4.** The party, requiring the cause to be so removed, shall recognize to the other party, in a reasonable sum, with sufficient surety or sureties, with condition, to enter the action at the district court, next to be held in the same county; and, if he fail so to recognize, the justice shall hear and decide the cause in like manner, as if no such request had been made to remove the cause.

Consequence of neglect. 1821, 76, § 10.

**SECT. 5.** The party, so recognizing, shall produce, at the district court, a copy of the record, and all such papers, as are required to be produced by an appellant; and, if he shall fail so to do, or to enter the action as before provided, he shall, upon the complaint of the adverse party to the said court, be there nonsuited or defaulted, as the case may be; and such judgment shall be rendered, as law and justice shall require.

Form and ser-

**SECT. 6.** The writ, in civil actions, commenced before a justice

of the peace, shall be a summons, or a *capias* and attachment, and of the form prescribed in the one hundred and fourteenth chapter, and signed by the justice ; and such writ shall be duly served not less than seven, nor more than sixty days, before the day therein appointed for trial. CHAP. 116.  
vice of justice writs.  
1821, 76, § 8.

SECT. 7. If any person, duly served with process, shall not appear and answer thereto, his default shall be recorded, and the charge in the declaration shall be considered as true ; and, on such default, and also when the action is on trial maintained, the justice shall enter judgment for such sum, not exceeding twenty dollars, as he shall find due to the plaintiff, with costs, and issue execution. Default, and judgment, on non appearance of defendant.  
1821, 76, § 8.

SECT. 8. If the plaintiff shall fail to enter and prosecute his action, or if, on trial, he shall not maintain his action, the defendant shall recover judgment for his costs, to be taxed by the justice ; and execution shall issue therefor. Costs for defendant, if he recover.  
1821, 76, § 8.

SECT. 9. Any party, aggrieved by the judgment of the justice, may appeal to the next district court in the same county, and may enter such appeal at any time within twenty four hours, Sundays not included, after the judgment was rendered by the justice ; in which case no execution shall issue, and the case shall be entered, tried and determined in the district court, in like manner as if it had been commenced there. Right of appeal, and effect thereof.  
1821, 76, § 10.

SECT. 10. Before such appeal is allowed, the appellant shall recognize with sufficient surety or sureties to the adverse party, if required by him, in a reasonable sum, with condition to prosecute his appeal with effect, and pay all costs arising after the appeal. Appellant to recognize, with sureties.  
1821, 76, § 10.

SECT. 11. The appellant shall, at the district court, produce a copy of the record, and of all the papers filed in the cause ; except when depositions or other written evidence or documents are filed, the originals shall be produced at the district court, instead of copies ; and, if the appellant shall fail to produce such papers, and enter and prosecute his action, the court, on complaint of the adverse party, may affirm the former judgment and costs. To produce papers in the district court.  
1821, 76, § 10.  
18 Pick. 464.

SECT. 12. Every justice may issue subpoenas for witnesses in civil actions, pending in the supreme judicial court, district court, or before county commissioners, himself, or any other justice, referees or auditors. Justices may issue subpoenas for witnesses.  
1821, 76, § 13.

SECT. 13. He may adjourn his court by proclamation, from time to time, as justice may require. May adjourn their courts.  
1821, 76, § 13.

SECT. 14. Whenever a justice of the peace is unable, by reason of sickness, or other unforeseen cause, to attend at the time and place by him appointed for holding a court, any other justice in the county, who can legally try a cause between the parties in the pending suit, may continue such cause, once, not exceeding thirty days, and note such continuance on the writ in such suit ; and, in case the disability of the justice, to whom the writ was returnable, is not removed at the expiration of the time of adjournment, such action may be entered before, and tried by, any justice of the peace of said county, at the time and place to which it was so adjourned, who may render judgment and issue execution accordingly. Proceedings, if a justice be absent, at the time appointed for holding a court.  
1834, 101.

SECT. 15. No justice shall be of counsel for either party, or give advice to either party, in a suit before him. Justices not to be of counsel.  
1821, 76, § 13.

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May issue scire facias against administrators for waste, and against bail.

May issue writs into other counties, in certain cases. 1836, 210, § 3.

Service of writs of scire facias.

Justice's records. Proceedings, in case of his death. 1821, 76, § 15.

Records may be transcribed by another justice, in certain cases. 1821, 76, § 15. Copy of such transcription to be legal evidence.

Justice may issue execution on such transcribed record.

Justice removing from the state, to deposit his records with the clerk of the courts. 1826, 329, § 1.

Administrator of deceased justice so to deposit them. 1826, 329, § 1.

Penalty for neglect, in either case. 1826, 329, § 1.

SECT. 16. Every justice of the peace may issue writs of scire facias against executors or administrators, upon a suggestion of waste, after judgment against them; and also against bail, taken in any civil action, and indorser of a writ; and enter judgment, and issue execution, as any court might do in like cases.

SECT. 17. In all cases of scire facias against bail, or the indorser of a writ, or executors or administrators, and in all trustee processes, or original writs against two or more defendants, in proceedings before a justice of the peace, or a judge of the municipal police court, where the defendant or trustee resides out of the county, where the proceedings are had, such justice or judge may direct the writ or execution to any proper officer of the county where the defendant or trustee resides; and such officer shall charge fees for travel, from the place of his residence to the place of service only, and postage for receiving and returning the execution.

SECT. 18. Every such writ of scire facias shall be served, in less than seven days, nor more than sixty, before the time when it is returnable.

SECT. 19. Every justice of the peace shall keep a fair record of his proceedings; and, when any one shall die, after having given judgment in a cause, but before such judgment is satisfied, it shall be in the power of any other justice of the same county, on complaint of the creditor, to issue a summons to the person, in whose possession the record of such judgment is, directing him to bring to him the same record; and, if such person shall contemptuously refuse to produce the same, or to be examined respecting it, on oath, the justice may commit him to prison, as punishment for the contempt, to be detained until he shall submit to such examination, and produce the record.

SECT. 20. When such record is produced, and delivered to the justice, and has been by him transcribed upon his own book or records, the original shall be returned to the person, who produced it.

SECT. 21. A copy of such transcription, attested by the transcribing justice, or otherwise proved to be a true copy of the same, shall be legal evidence in all cases, where an authenticated copy of the original might be received.

SECT. 22. On such transcribed record, the justice may issue execution, in the same manner, as if the judgment had been rendered by himself; changing the form, as the circumstances shall require; but no such execution shall issue, after the expiration of one year from the time the judgment was rendered, unless after scire facias.

SECT. 23. Every justice, who may remove from the state, shall, before his removal, deposit with the clerk of the judicial courts in the county, for which he was commissioned, all his records and papers, appertaining to his said office.

SECT. 24. The executor or administrator of any deceased justice, shall, also, be bound to deposit all the records and papers of such deceased justice, relating to his office, which shall come into his possession, in the clerk's office in the county, for which such justice was commissioned.

SECT. 25. The person, neglecting to comply with the duty, required of him in either of the two preceding sections, shall forfeit and pay one hundred dollars; to be recovered on indictment.

**SECT. 26.** The said clerk shall receive and safely keep all such records and papers, and may grant certified copies of them, which shall be as good evidence, as if certified by the justice.

**SECT. 27.** If any justice has died or removed, or shall die or remove, from the state, without recording and signing any judgment by him rendered in any action before him, and his docket, original writ, and papers appertaining thereto, and execution, if any issued, shall have been deposited in the clerk's office, before mentioned, such clerk may, and shall, when required, on payment of usual fees, make out and certify copies of all the papers in such cause, and all facts appearing in such docket; and such copies shall be legal evidence.

**SECT. 28.** Any justice, whose commission has expired, or may expire, and shall not be renewed, is authorized to issue and renew executions on any judgment, by him rendered while in commission; which shall be obeyed by the officer, as if the commission of the justice had not expired; and also to certify copies of judgment rendered by him; but this power shall not continue more than two years, from the time such commission expired.

**SECT. 29.** Any justice may hear and decide causes at his dwelling house, office, or at any other suitable place; and the writ, in such cases, shall be made returnable accordingly.

**SECT. 30.** In all cases, except those mentioned in the first section, the defendant shall plead the general issue, and need not file any brief statement.

**CHAP. 116.**

Duty of the clerk, in such cases. 1826, 329, § 2.

Proceedings, if justice die or remove, not having completed his records. 1831, 498, § 1.

Certain powers of justices continued, after expiration of their commissions. 1821, 76, § 16. 1829, 441.

Place, where justice writes shall be returnable.

All trials to be upon the general issue. 14 Mass. 273.

**CHAPTER 117.****OF THE LEVY OF EXECUTIONS ON PERSONAL PROPERTY.**

- SECT. 1.** Officer to set off executions against each other.
2. What goods may be taken and sold on execution.
3. Money may be so taken.
4. Time of sale of goods on execution.
5. Manner of advertising.
- 6, 7. Adjournment of sale.
8. Officer may require indemnity.
9. Re-sale, if purchaser refuse to take the goods.
10. Officer's return to specify the goods sold. Penalty for violation of his duty.
11. Disposal of proceeds of sale.
12. Sale of a building, or rents and profits thereof, on execution, for the ground rent.
13. Shares in incorporated companies may be sold.
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21. Mode of selling.
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- CHAP. 117.** **SECT. 27.** Disposal of proceeds of sale of an equity of redemption.
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  38. Proceedings, to attach and sell personal property under mortgage.
  39. Application of the proceeds of sale.

40. Such property may be sold, subject to the claim of the mortgagee.
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43. Mode of levying them on real estate.
44. Notice and incidents of sales, such cases.
45. Indemnity of the person, when property is so sold.
46. Any inhabitant or proprietor to pay his proportion of such warrant.
47. Such payment shall discharge liability thereon.
48. And from executions in favor of others who have been levied upon
49. Manner of ascertaining an individual's proportion.
50. Purchaser of a right, under a contract, to a conveyance of real estate, may have a bill in equity to compel performance.
51. Proceedings, if the obligor disclose an assignment of the obligation.

Officer to set off executions against each other.  
1821, 60, § 4.  
7 Mass. 140.

**SECTION 1.** When a sheriff, deputy sheriff, coroner or other officer, has in his hands executions, wherein the creditor in one execution is debtor in the other, any such officer is hereby directed to cause one execution to answer and satisfy the other, so far as the same will extend; and this shall be his duty also, if one of such executions is in the hands of such officer, and the creditor in the other shall be in possession of his execution, and shall tender the same to such officer, and demand of him to set off the one against the other, in the manner prescribed in this section; provided always that the creditor in one execution is, in the same capacity and true debtor in the other.

What goods may be taken and sold on execution.

**SECT. 2.** All chattels, real and personal, liable at common law to attachment, and not exempted therefrom, as provided in chapter 117, § 1, shall be liable to be taken and sold on execution, as prescribed in this chapter.

Money may be so taken.  
1 Pick. 271.

**SECT. 3.** Current gold or silver coin may be taken on execution and paid to the creditor, as money collected; and bank notes and all other evidences of debts, issued by any moneyed corporation and circulated as money, may be taken on execution, and paid to the creditor at their par value, if he will accept them; and other goods they may be sold like other chattels.

Time of sale of goods on execution.  
1821, 60, § 5.  
5 Mass. 399.

**SECT. 4.** Goods and chattels, legally taken on execution, shall be safely kept by the officer, at the expense of the debtor, for a space of four days, at least, next after the day on which they are taken, exclusive of Sunday; and they shall be sold within five days next after the day of seizure, except as hereinafter provided.

fore such sale, the debtor shall redeem them, by otherwise **CHAP. 117.**  
the execution.

5. The officer shall post up public notice of the time of sale, at least forty eight hours before the time of sale, more public places in the town, or place of sale. **Manner of advertising.**  
1821, 60, § 5.

6. If, at the time appointed for the sale, the officer should be prevented by sickness, or other casualty, from attending at the sale; or, being present, should deem it for the advantage of the debtor, to postpone the sale, for want of purchasers, or other sufficient cause, he may postpone the sale, not exceeding six days after the day appointed; and so, from time to time, for the same cause, giving notice of every adjournment, in like manner as required in the preceding section. **Adjournment of sale.**  
4 Pick. 354.

7. For good reason, and for the purpose of obtaining a better price for the goods to be sold, he may, if he should deem it to be for the benefit of the debtor, adjourn the auction to another place in the same town. **Same subject.**  
9 Mass. 265.  
2 Fairf. 371.

8. Where there is reasonable doubt, as to the ownership of the goods, or their liability to be taken in execution, the officer may require sufficient security to indemnify himself. **Officer may require indemnity.**  
4 Mass. 498.  
7 Mass. 123.

9. If the highest bidder, at such a sale, shall refuse to pay for an article, the officer shall sell the same again at any time within ten days, giving due notice of the second sale, and he shall account for what he shall receive on the second sale, and for any damages he may have recovered of the first purchaser for a loss on the re-sale, as for so much received on the first sale. **Re-sale, if purchaser refuse to take the goods.**  
7 Mass. 352.

10. The officer, who shall make such sale, shall, in his report, particularly describe the goods sold, and the price for each article or lot, describing it, was sold; and, if any person shall be guilty of any fraud in the sale or return, he shall be liable to pay the debtor, to pay him five times the sum of which he was liable; and to be recovered in an action of the case. **Officer's return to specify the goods sold.**  
**Penalty, for violation of his duty.**  
1821, 60, § 5.  
9 Mass. 138.  
21 Pick. 197.

11. The money, arising from the sale of any property in execution, shall be applied to paying the charges, and satisfying the claims; and the residue, if any, shall be returned to the debtor, or to the demand, or otherwise legally applied, in the manner prescribed in the preceding section, twenty five. **Disposal of proceeds of sale.**  
1821, 60, § 5.

12. When a lessor of any lands, leased for the purpose of erecting any buildings thereon, shall commence an action against the lessee, and attach the same building, within six months after the rent becomes due, and recover such rent, he may on execution use the rents and profits of such buildings to be sold for the satisfaction of the debt, for so long a time, as will be sufficient to pay the debt and costs; and the residue of such building to be sold, observing the same directions of law as in the sale of any other personal estate; and, in the latter case, to give notice to the debtor, the right to redeem the same within one month after the payment, to the purchaser, of the full amount paid by him for the same. **Sale of a building, or rents and profits thereof, on execution, for the ground rent.**  
1824, 258, § 1, 2.  
1825, 318.

13. Any share or interest of any stockholder or proprietor in any incorporated company, may be taken on execution, and sold in the following manner. **Shares in incorporated companies may be sold.**  
1821, 60, § 25.  
8 Mass. 385.

**CHAP. 117.** with the amount of the execution or warrant of distress ; and, when the names of the proprietors are not known, he shall publish the numbers of the lots or divisions of said land ; the last publication to be three months before the time appointed for the sale. And if necessary to complete the sale, he may adjourn the same, from day to day, not exceeding three days. And he shall give a deed to the purchaser, to hold said land in fee ; expressing in said deed the cause of sale. And the proprietor of the land, so sold, shall have a right to redeem the same, at any time within one year from the time of sale, on paying the sum for which the same was sold and the necessary charges and interest thereon.

Indemnity of the person, whose property is so sold. 1833, 64, § 4.

**SECT. 45.** The owner of any real or personal estate, so taken for the purposes above mentioned, shall be entitled to recover against such town, in an action of assumpsit, the full value of property so taken and sold, with interest, at the rate of twelve per cent. yearly, with costs of suit ; and may be admitted to prove the real value thereof, whatever may have been the price at which the same was sold.

Any inhabitant, or proprietor, may pay his proportion of such warrant. 1834, 133, § 1.

**SECT. 46.** Whenever any such warrant of distress or execution shall be issued, as aforesaid, against any town, it shall be lawful for any inhabitant thereof, or for any proprietor of any lands therein either before or after the issuing of such precept, to pay his proportion of such order or judgment ; which part or proportion shall be ascertained by an assessment or apportionment thereon made by the assessors of said town ; and which service they shall be required to perform, at the request of any such inhabitant, proprietor, or on notice given them by the county commissioners.

Such payment shall discharge his liability thereon. 1834, 133, § 2.

**SECT. 47.** Every person, so paying his part or proportion to the treasurer of the corporation, for the use of the person interested or to such person himself, shall be discharged, both as to his person and his property, from such warrant or execution.

And from executions in favor of others, who may have been levied upon. 1834, 133, § 3.

**SECT. 48.** If any such warrant or execution has been, or shall be levied on the property of any person, who at the time has not paid his part or proportion, every person having so paid, or that shall so pay his part, as aforesaid, shall be discharged from all executions that may be issued on any judgment against the inhabitant of such town, on account of said levy, and his person and estate shall forever be discharged.

Manner of ascertaining an individual's proportion. 1834, 133, § 4.

**SECT. 49.** The certificate of the major part of the assessors of such town, of any person's part or proportion, shall be conclusive evidence thereof ; and, being delivered to the officer, he shall, on payment thereof, in manner aforesaid, in his return on the execution or warrant, return the same satisfied for that sum, with the name of the person who paid it.

Purchaser of a right, under a contract, to a conveyance of real estate, may have a bill in equity to compel performance. 1829, 431, § 2. 14 Maine, 34. 15 Maine, 157. Proceedings, if

**SECT. 50.** The purchaser at auction of the right, which any person has to a deed of lands on certain condition named in a written contract, shall have the same remedy by bill in equity to compel a conveyance of it, as mortgagers have to compel mortgagors to convey to them, on performance of, or offer to perform the condition of a mortgage.

**SECT. 51.** Whenever any obligor shall plead, or in his answer disclose an assignment of the bond or contract, prior to the attach-

ent by the obligee, or person entitled to the conveyance, and the validity of such assignment shall be put in issue, the court shall use the assignee to be made a party to the bill; and, on his appearance or non appearance, may direct the same to be tried by jury; and, if found fraudulent, it shall be no bar to the conveyance prayed for.

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the obligor disclose an assignment of the obligation. 1829, 431, § 3.

## CHAPTER 118.

## OF BAIL IN CIVIL ACTIONS.

1. How bail shall be taken.
2. Names of bail to be entered on executions.
3. Officer to notify bail. Fees.
4. Surrender of principal into court.
5. In case of avoidance, officer's duty, and liability of bail.
6. Scire facias against bail, in such case.
7. Form of the scire facias.
8. Limitation of such action.
9. Pleadings and defence, by bail.
10. Surrender of principal on scire facias.

11. Principal to be committed to jail.
12. When discharged, if not taken in execution.
13. Proceedings, when bail is taken in a justice action.
14. Surrender, and commitment of principal in such case.
15. Officer's duty and fees.
16. Surrender in such case, after judgment.
17. Surrender before judgment.
18. Remedy of bail against principal.

**SECTION 1.** Bail shall always be taken, and the bail bond be returned and filed with the writ, in the manner mentioned in the six hundred and fourteenth chapter.

How bail shall be taken.

**SECT. 2.** If judgment be rendered against the principal in the action, in which the bail was taken, the clerk of the court or justice of the peace, issuing the execution on such judgment, shall, on the margin of the execution, insert the names of the persons who came bail, with the place of their abode, and their addition, provided, they are named in the bail bond; and, if the debtor was committed to jail, such clerk or justice shall note, in like manner, the jail, to which he was committed.

Names of bail to be entered on executions. 1821, 67, § 1. 4 Greenl. 10.

**SECT. 3.** The officer, holding said execution, whether the debtor be given bail to the arresting officer, or to the jailer, shall notify the bail personally, or by leaving a notice, in writing by him signed, at the usual place of abode of the bail, if living in his county, at least fifteen days before the expiration thereof, certifying, that he cannot find the principal debtor, nor property wherewith to satisfy the execution; for which service he shall be entitled to demand and receive of the bail the usual fee for the service of a writ, and the travel from the dwelling house of the officer, to the dwelling house of the bail; and shall minute in said notice the amount of the fees; which the bail shall pay in twenty days, unless, one day at least, before the execution is returnable, the bail shall produce and deliver to the officer the principal debtor.

Officer to notify bail. Fees. 1821, 67, § 1. 7 Greenl. 80.

**SECT. 4.** If the bail shall not have committed the principal to

Surrender of

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principal into court.  
1821, 67, § 2.  
14 Mass. 115.

In case of avoidance, officer's duty, and liability of bail.  
1821, 67, § 2.

Scire facias against bail, in such case.  
1821, 67, § 3.  
4 Pick. 120.  
13 Pick. 339.

Form of the scire facias.

Limitation of such action.  
1821, 67, § 8.  
7 Mass. 342.

Pleadings, and defence by bail.  
8 Mass. 264, 490.  
17 Mass. 591.  
10 Pick. 49.

Surrender of principal, on scire facias.  
1821, 67, § 2.  
5 Mass. 373.  
7 Mass. 169.

Principal to be committed to jail.  
1821, 67, § 3.

When discharged, if not taken in execution.

Proceedings, when bail is taken in a justice action.  
1821, 67, § 4.

prison, in the manner mentioned in the said one hundred and twentieth chapter, they may, at any time, before final judgment in the original suit, bring the principal into court, where the action is pending, and deliver him into the custody thereof, and be there charged of their suretyship.

**SECT. 5.** In case of the avoidance of the principal, and on the execution by the officer, that he has had the same in his hands at least thirty days before the expiration thereof, that the principal is not found, his bail shall be obliged to the judgment with interest thereon, from the time when it is rendered, unless he shall discharge himself by surrendering the principal, before final judgment against him on the writ of scire facias, or by other sufficient defence.

**SECT. 6.** When the principal shall so avoid, and his chattels or lands cannot be found to satisfy the execution, the son, for whom judgment was given, shall be entitled to a scire facias in his own name from the same court, against the bail, which may be taken out of the clerk's office in vacation, as of term time.

**SECT. 7.** In such writ, the plaintiff need not declare on the bond, but may merely allege, that the defendants became the original action.

**SECT. 8.** No such action shall be maintained against a son, as a bail, unless commenced within one year from the time judgment was rendered against the principal.

**SECT. 9.** The bail may plead jointly or severally, but never became bail, as alleged in the writ, and, under that plea, never avail themselves of every defence, which would avail them in an action of debt on the bond, upon the plea that it is not their debt, or may shew any special matter of discharge, filing a brief in defence thereof, as by law provided.

**SECT. 10.** The bail may surrender the principal in court, before final judgment on the scire facias, and deliver him to the officer, and, on paying all the costs on the scire facias, they shall be discharged.

**SECT. 11.** The principal, so surrendered, shall be committed to the county jail, there to remain for the space of fifteen days, before he shall be taken in execution.

**SECT. 12.** If the creditor shall not, within fifteen days next after the surrender of the principal, take him in execution, the bail shall discharge him, on payment of the legal prison fees.

**SECT. 13.** When bail is taken, on mesne process, in an action, triable before a justice of the peace, and there shall be a return of the execution issued on the judgment in such suit, that the principal is not found; said justice may issue a scire facias against the bail, to be served seven days before the day of the trial, and, if no sufficient cause is shown to the contrary, he may proceed to judgment for the debt and costs recovered, with interest thereon, from the time judgment was rendered against the principal; but shall be no bar to such scire facias, that the debt and costs on the original judgment, when added together, shall exceed the sum of twenty dollars.

**SECT. 14.** If the bail shall, at any time before final judgment in the original suit is rendered, or upon the return of the scire facias before final judgment thereon, bring the principal before such justice, and procure the attendance of the sheriff, his deputy, or a constable of the town, in which the court is holden, to receive such principal, such justice shall make a record of such surrender, and order him into the custody of such officer; and he shall commit the principal to jail, to be proceeded with as mentioned in the eighth and twelfth sections; and, on payment of costs arising by the scire facias, the bail shall be fully discharged.

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Surrender, and commitment of principal, in such case. 1821, 67, § 5. 15 Mass. 535.

**SECT. 15.** It shall be the duty of the officer to attend before such justice, for the purpose aforesaid, when so requested; and, for such duty, he shall be allowed the same fees as for arresting and committing defendant on mesne process; and, for neglect of official duty in the above case, he shall be answerable for all damages to the party injured thereby.

Officer's duty, and fees. 1821, 67, § 7.

**SECT. 16.** When the principal is surrendered to such justice, before final judgment in the original action, the bail shall deliver to such officer a copy of the entry of the surrender, which entry the officer is bound to make, attested by the justice; and the officer shall deliver the same to the jailer, on committing the prisoner to the custody; and this shall be a sufficient warrant to the officer, for receiving and conveying him to jail, and to the jailer, for holding him in custody.

Surrender, in such case, after judgment. 1821, 67, § 6.

**SECT. 17.** If the principal is surrendered, before final judgment in the original suit, the bail shall deliver to the officer a copy of the original writ, with the return indorsed thereon, attested by the justice; and the officer shall deliver the same copy to the jailer; and this shall be a sufficient warrant to the officer and jailer, as mentioned in the preceding section.

Surrender, before judgment.

**SECT. 18.** Bail may have their remedy against their principal, in an action on the case, for all damages sustained by them, by reason of their suretyship.

Remedy of bail against principal. 1821, 67, § 9.

**CHAPTER 119.****OF TRUSTEE PROCESS OR FOREIGN ATTACHMENT.**

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| <p>1. In what actions trustee process may be used.</p> <p>2. Form of the writ.</p> <p>3. Mode of service.</p> <p>4. Effect of service on the trustee.</p> <p>5. In what county the action shall be commenced.</p> <p>6. Insertion of additional names of trustees.</p> <p>7. Notice to principal, if absent from the state. Trustee may appear for him.</p> | <p><b>SECT. 8.</b> What corporations may be summoned as trustees.</p> <p>9. Trustee, about to leave the state, may disclose before a justice.</p> <p>10. Course of proceeding in such case.</p> <p>11. Any trustee may so disclose, by consent.</p> <p>12. An inhabitant of another state may be adjudged trustee.</p> <p>13. Effect, if defendant in a suit be summoned as trustee of the plaintiff.</p> |
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16. Costs, if trustee be discharged, the first term.
17. If adjudged trustee, he may retain his costs.
18. Lien for costs on specific articles in his hands.
19. Disclosure to be sworn to.
20. Proceedings against the principal, if the trustees be all discharged.
21. Additional compensation, if trustee dwell in another county.
22. Liability of trustee, for not appearing at the first term.
23. Joint liability for costs, if several fail to appear.
24. Exception, in favor of trustees residing out of the county, or absent from the state, at the time of service.
25. If the action fail, costs for defendant and trustee.
26. No costs to trustee, on discontinuance, unless he appear.
27. Trustee living out of the county may appear by attorney.
- 28, 29. Proceedings in such case.
30. Disclosure, how sworn to.
31. Trustee not appearing, to be defaulted.
32. Trustee may submit a statement of facts to the court.
33. Plaintiff may prove other facts, not stated nor denied in the disclosure.
34. Such proof may be submitted to the court or a jury.
35. Proceedings, if trustee disclose an assignment of the principal's claim.
36. Assignee may be summoned.
37. If he appear, his title to be tried.
38. If he do not appear, his claim to be void.
39. Principal defendant may be a witness.
40. Testimony to be in writing.
41. Form of judgment against principal and trustee.
42. Trustee may appear by consent, at a subsequent term, as of the first.
43. Executor or administrator liable as trustee for a debt or legacy.
44. If a person die, after being adjudged trustee, the goods and effects are held in the hands of the administrator.
45. If trustee die before judgment, his administrator may be cited.
46. If administrator do not appear, judgment may be rendered.

- SECT. 47. If he do not pay, scire issue.
48. Proceedings, if trustee thirty days after judgment rendered.
49. Manner of issuing ex administrator be adjudged.
50. Remedy on his bond, if to pay.
51. Specific articles in trust to be delivered to the creditor.
52. Remedy, if trustee refused.
53. Mode of settling the value between the principal and trustee.
54. If part only be taken, to be delivered to the principal.
55. Officer to restore surplus of sale.
56. Trustee process, after payment of the debtor.
57. Effect thereof.
- 58, 59, 60, 61. Proceedings, disclose property mortgaged to him.
62. Trustee not prevented from selling the property mortgaged.
63. Cases, in which a person may be adjudged trustee.
- 64, 65, 66. Proceedings, if creditor in an action pending, be added as trustee of the plaintiff.
67. Money or goods may be taken by trustee process, he is not liable to pay.
68. Proceedings, if trustee's costs, when liable.
69. Goods, fraudulently taken, may be held by trustee process.
70. Trustee may retain in his hands for any demand against him.
71. But not for unliquidated damages.
72. Form of judgment against trustee.
73. Discharge of trustee's claim of principal.
74. Scire facias against trustee.
- 75, 76, 77. Judgment on scire facias.
78. Liability for costs, if defendant on scire facias, not having before examined.
79. If examined in the original action he may be examined on scire facias.
80. Goods and effects liable to attachment, if not demanded within thirty days. Exception.
81. If there be no second attachment the principal may recover the goods.
82. Demand, how made, if taken out of the state.
- 83, 84. Effect of judgment against trustee.

- SECT. 85.** Penalty, if trustee disclose falsely.
86. Trustee exempt from costs on scire facias, in certain cases.
87. Form and service of trustee process for justice courts.
88. In what county to be brought.
89. Default, if trustee do not appear.
90. Costs, if discharged.
91. May retain costs, if adjudged trustee.
92. Costs, on discontinuance.

- SECT. 93.** Subsequent proceedings.
94. Discharge of trustee, if judgment be less than five dollars. Exception.
95. How execution shall issue, if defendant or trustee remove from the county.
96. Proceedings, if trustee be discharged, living in a county different from plaintiff and defendant.

**SECTION 1.** All personal actions, except those of detinue, replevin, actions on the case for malicious prosecution, slander by writing or speaking, and those for assault and battery, may be commenced by foreign attachment, or trustee process, in the supreme judicial court or district court, or, when the amount demanded in damages is not less than five dollars, nor more than twenty dollars, before a municipal or police court, or a justice of the peace.

In what actions trustee process may be used.  
1821, 61, § 1.  
1824, 275, § 1.

**SECT. 2.** The writ shall be in the form heretofore established, authorizing an attachment of goods and estate of the principal defendant, in his own hands, as well as in the hands of the trustees; and may be varied from time to time, as the supreme judicial court may order.

Form of the writ.

**SECT. 3.** The officer, serving such writ, shall attach the goods and estate of the principal, of the value required, if so much can be found by him, and read the writ to him, or leave a copy of it, at his last and usual place of abode; which shall be a sufficient service on the principal, whether any trustee is holden or not.

Mode of service.  
1821, 61, § 1.

**SECT. 4.** Such service, on the trustee, shall bind all goods, effects or credits of the principal defendant, entrusted and deposited in his hands or possession, to respond the final judgment in the action, in like manner as goods or estate, when attached by the ordinary process.

Effect of service on the trustee.  
1821, 61, § 1.

**SECT. 5.** If all the trustees live in the same county, the action shall there be brought, and, if they reside in different counties, the action shall be commenced in any [county], in which any one of them resides; and, in a trustee process against a corporation aggregate, such corporation, for this purpose, shall be considered as having its residence in the county, in which such corporation has its established or usual place of business, or shall have held its last annual meeting, or shall usually hold its meetings.

In what county the action shall be commenced.  
1821, 61, § 1.  
14 Mass. 132.  
6 Greenl. 405.  
22 Pick. 250.

**SECT. 6.** The plaintiff may insert the names of as many persons, as trustees, as he may deem necessary, at any time before the process is served on the principal, but not after; and he may cause a further service to be made on any of the trustees, if found expedient, if the service be afterwards made or renewed on the principal; but no costs for services shall be taxed for the plaintiff in such case, except for that last made.

Insertion of additional names of trustees.  
1821, 61, § 2.

**SECT. 7.** When the principal is out of the state at the time of the service, and has no agent within this state, the same notice shall be given, as is provided in the twenty eighth section, of chapter, one hundred and fourteen; or the same proceedings may be had, as is provided in sections, two and three, of chapter, one hundred

Notice to principal, if absent from the state. Trustee may appear for him.  
1821, 61, § 3.  
1 Greenl. 325.



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and fifteen, as they may be severally applicable, until mean time, he shall come into the state before the said court; and, when he does not appear in his own person, any one or more of the trustees, having goods, effects in their hands, and having been adjudged trustees, may in his behalf, and in his name plead and defend the cause.

What corporations may be summoned, as trustees. 1829, 442.

**SECT. 8.** All corporations, except counties, towns, tracts and parishes, may be summoned as trustees, and served on them, as other writs on such corporations; and an answer by attorney or agent, and make disclosures, which shall be signed or sworn to by such attorney or agent; and the proceedings shall thereupon be had throughout, except changes in form, as in other cases of foreign attachment.

Trustee, about to leave the state, may disclose before a justice. 1830, 469, § 1.

**SECT. 9.** When any person, summoned as trustee, depart from the state, or go on a voyage and not return within the term of the court, where he is summoned to appear, he shall be to a justice of the peace and quorum of the county, and a trustee resides, for a notice to the plaintiff in the suit before him at a place and day appointed for taking the deposition of such trustee.

Course of proceeding in such case. 1830, 469, § 1.

**SECT. 10.** On service having been made and returned to the order of such justice, the examination and deposition shall be taken and sworn to before the justice, and, being returned to court, the same proceedings may be had as if it had been in court.

Any trustee may so disclose, by consent. 1830, 469, § 2.

**SECT. 11.** In any case, where a person has been summoned as trustee, his examination and disclosure may be so taken by the plaintiff and trustee consent thereto.

An inhabitant of another state may be adjudged trustee. 1834, 139. 21 Pick. 263.

**SECT. 12.** Any person, on whom a trustee process is served, in any mode by law prescribed, shall be liable to be examined as trustee by the court, though he was not then, and never was, an inhabitant of this state; and the writ may be made returnable in the county, in which either the plaintiff or principal may reside.

Effect, if defendant in a suit be summoned as trustee of the plaintiff. 1834, 95, § 1.

**SECT. 13.** Whenever an action is brought for the recovery of a debt, and the defendant has been; or shall be, summoned as trustee of the plaintiff, the action shall be continued and the disclosure of the trustee, unless the court shall otherwise order, shall be in evidence on the trial, if the defendant shall be adjudged trustee, the disclosures made by him thereon may be given in evidence on the trial, between the trustee and his creditor.

Costs, in such case. 1834, 95, § 1.

**SECT. 14.** If the amount disclosed shall be equal to or more than the amount recovered in the action, the trustee shall be liable to no costs consequent to the service of the trustee process upon him.

Same subject. 1834, 95, § 2.

**SECT. 15.** In such action, as is mentioned in the two preceding sections, the intervention of the trustee process shall not prevent the plaintiff from recovering his costs against the principal, except as is provided in the preceding section.

Costs, if trustee be discharged the first term. 1821, 61, § 4. 1823, 362.

**SECT. 16.** If any supposed trustee shall come into court at the first term, and submit himself to examination on oath, and in writing declared, that at the time of the service of the trustee process upon him, he had not any goods, effects or credits in the state, he shall be discharged from the trustee process.

principal in his hands or possession, he shall be entitled to his costs, in the same manner as in civil actions, where issue is joined for trial.

SECT. 17. If such person is adjudged trustee, he may deduct from the amount in his hands, the amount of such costs.

SECT. 18. Where such person shall be adjudged trustee for specific articles in his hands, he shall have a lien upon the same for his costs; and the officer, who shall dispose of the same on execution, shall pay such trustee the amount due him for costs, and deduct the same from the amount of sale, and account to the creditor for the balance; the amount of such fees shall be indorsed on the execution by the clerk, and the same shall be evidence of the lien.

SECT. 19. The disclosure, when completed and subscribed by the trustee, shall be sworn to by him in open court, or before some justice of the peace.

SECT. 20. If all the persons, summoned as trustees, shall be discharged, or the suit against them has been discontinued, the plaintiff shall not proceed against the principal defendant, unless there has been such a service of the original writ upon the principal, as would authorize the court to proceed against him to judgment in an action commenced in the ordinary form; but the principal, if he will, may assume the defence of the suit.

SECT. 21. When the trustee, at the time the writ was served on him, dwelt in any county, other than the one where the writ was returnable, the court shall, in case of his discharge, allow him, in addition to his legal fee, a reasonable compensation for his time and expenses, in appearing and defending himself.

SECT. 22. If any person, belonging to the county, in which the writ is returnable, being summoned, shall neglect to appear and submit to examination at the return term, and having no reasonable cause to the contrary, he shall be liable for all costs afterwards arising in the suit, to be recovered and paid out of his own goods or estate, if judgment be rendered for the plaintiff; unless recovered out of the goods or effects in the hands of the trustee, and belonging to the principal.

SECT. 23. When several trustees, resident in the county, where the action is pending, being summoned, shall neglect to appear, the judgment for costs shall be rendered against them jointly.

SECT. 24. Persons summoned as trustees, resident out of the county, where the suit is pending, shall not be liable for any costs, arising on the original process herein provided, and, if the person, summoned as trustee, is out of the state at the time the writ is served on him, and, if he shall appear at the first term of the court, after his return, he shall be allowed for his costs and charges in the same manner, as if he had appeared at the term when the action was entered.

SECT. 25. When the plaintiff does not support his action against the principal, the court shall award costs against him, as well in favor of the principal, as in favor of such persons summoned as trustees, severally, who have appeared and submitted to examination on oath; and several executions shall issue accordingly.

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8 Pick. 25, 293, 555.

21 Pick. 21.

If adjudged trustee, he may retain his costs. 1828, 382.

Lien for costs, on specific articles in his hands. 1828, 382.

14 Mass. 271.

Disclosure to be sworn to.

Proceedings against the principal, if trustees be all discharged. 1821, 61, § 5. 12 Mass. 36.

Additional compensation, if trustee dwell in another county. 1821, 61, § 4. 12 Pick. 529.

Liability of trustee for not appearing at the first term. 1821, 61, § 4.

Joint liability for costs, if several fail to appear. 1821, 61, § 4.

Exception, in favor of trustees residing out of the county, or absent from the state, at the time of service. 1821, 61, § 4. 10 Mass. 25.

If the action fail, costs for defendant and trustee. 1821, 61, § 5.

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No costs to trustee on discontinuance, unless he appear. 1821, 61, § 5.  
Trustee, living out of the county, may appear by attorney. 1821, 61, § 6.

Proceedings, in such case. 1821, 61, § 6.  
Same subject. 1821, 61, § 6.

Disclosure, how sworn to. 1821, 61, § 6.

Trustee, not appearing, to be defaulted.

Trustee may submit a statement of facts to the court.

Plaintiff may prove other facts, not stated nor denied in the disclosure.

Such proof may be submitted to the court or a jury. 8 Pick. 67, 470.

Proceedings, if trustee disclose an assignment of the principal's claim. 1821, 61, § 7. 22 Pick. 83.

Assignee may be summoned. 1821, 61, § 7.

If he appear,

SECT. 26. When a person, summoned as trustee, does not come into court, and declare he had no property or credits of the principal in his hands, when the writ was served, and submit himself to examination on oath, the court shall not award costs in his favor, though the suit shall be discontinued.

SECT. 27. A person, summoned as trustee, and then living in a county other than that where the writ is returnable, shall not be required to appear in person in the original suit, or in a suit on scire facias; but he may appear by attorney, and declare whether he had any goods or effects of the principal in his hands, when the writ was served; and thereupon offer to submit himself to examination on oath.

SECT. 28. If the plaintiff shall proceed no further, such declaration shall be considered as true.

SECT. 29. If the plaintiff shall think proper to examine such supposed trustee on oath, the answers may be taken before a judge of the district court for the county, in which the trustee may dwell, or any justice of the peace of such county.

SECT. 30. In all cases, when a trustee has submitted himself to examination on oath, in court, the answers to such examination may be sworn to before a judge of such court, or a justice of the peace; and the same, being filed in court, shall have the same effect, as if sworn to in open court.

SECT. 31. When any person has been duly summoned as trustee, and neglects to appear and answer to the suit, he shall be defaulted, and be thereupon adjudged trustee, as alleged.

SECT. 32. If any person, summoned, shall admit, that he has, in his hands, goods, effects or credits of the principal, or shall wish to refer that question to the court upon the facts, he may, instead of the declaration before mentioned, make a declaration of such facts as he may deem material, and submit himself thereupon to a further examination on oath; and such declaration and further examination, if any, shall be sworn to, as before provided.

SECT. 33. The answers and statements, sworn to by any person, summoned as a trustee, shall be considered as true, in deciding how far he is chargeable; but the plaintiff or trustee may allege and prove any other facts, not stated nor denied by the supposed trustee, which may be material in deciding that question.

SECT. 34. Any question of fact, arising upon such additional allegations, may, by consent, be tried and determined by the court, or may be submitted to a jury, in such manner as the court shall direct.

SECT. 35. When it appears, by the answers of any person summoned as a trustee, that any effects, goods or credits in his hands are claimed by a third person, in virtue of an assignment from the principal debtor, or in some other way, the court may permit such claimant, if he see cause, to appear and become a party to the suit, and maintain his right.

SECT. 36. Should such claimant not appear voluntarily, notice may be issued and served on him, in such manner as the court may direct.

SECT. 37. If such claimant shall appear, he may be admitted

as a party to the suit, so far as respects his title to the goods, effects or credits in question; and may allege and prove any facts, not stated or denied in the disclosure by the supposed trustee, and such allegations shall be tried and determined, in the manner before provided.

**SECT. 38.** If such assignee, having been duly notified, shall not appear in person or by attorney, the assignment shall have no effect to defeat the plaintiff's attachment.

**SECT. 39.** Upon the trial between the attaching creditor and the person claiming the same, as before mentioned, the principal defendant may be examined as a witness for either party, if there be no other objection to his competency, except his being a party to the original suit.

**SECT. 40.** All testimony, relating to the additional allegations of any party in such trial, shall be given by depositions, taken and filed in the usual manner.

**SECT. 41.** When the plaintiff shall recover judgment against the principal, and there shall be any person summoned as trustee, who shall not have appeared and discharged himself, and against whom the suit shall not have been discontinued, the court shall award judgment and execution against the goods, effects and credits in his hands, as well as against the principal, in the usual form.

**SECT. 42.** If there be any agreement between the plaintiff and supposed trustee, that he may appear at a subsequent term of the court, instead of the first term, saving to such trustee all such advantages as he would have had, on appearing and answering at the first term, the court shall allow him all such advantages.

**SECT. 43.** Any debt or legacy, due from an executor or administrator, and any goods, effects and credits in his hands, as such, may be attached by process of foreign attachment.

**SECT. 44.** If any person, who is summoned as a trustee in his own right, shall die before the judgment, if any, recovered by the plaintiff, shall be fully satisfied, the goods, effects and credits, in his hands at the time of attachment, shall remain bound thereby; and his executors or administrators shall be liable therefor, in like manner, as if the writ had been originally served on them.

**SECT. 45.** If the person, so summoned, shall die before judgment in the original suit, his executor or administrator may appear voluntarily, or may be cited to appear, in the same manner as is provided, in the case of the death of a defendant in a common action; and the further proceedings shall then be conducted in the same manner as if the executor or administrator had been originally summoned, as a trustee; except, that the examination of the deceased, if any had been taken and filed, shall have the same effect as if he were living.

**SECT. 46.** If, in such case, the executor or administrator shall not appear, the plaintiff, instead of suggesting the death of the testator or intestate, may take judgment against him by default or otherwise, as if he were living, and the executor or administrator shall pay, on the execution, the amount, which he would have been liable to pay to the principal defendant; and he shall be thereby discharged from all demands on the part of the principal defendant

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his title to be tried.  
1821, 61, § 7.  
1 Greenl. 328.  
5 Greenl. 410.

If he do not appear, his claim to be void.

1821, 61, § 7.

Principal defendant may be a witness.

1821, 61, § 7.

Testimony to be in writing.

Form of judgment against principal and trustee.

1821, 61, § 8.

Trustee may appear, by consent, at a subsequent term, as of the first.

Executor or administrator liable as trustee, for a debt or legacy.

7 Mass. 271.

If a person die, after being adjudged trustee, the goods and effects are held in the hands of the administrator.

2 Fairf. 34.

If trustee die before judgment, his administrator may be cited.

1821, 61, § 14.

If administrator do not appear, judgment may be rendered.

**CHAP. 119.** in the suit, for the amount so paid, in like manner as if the  
tor or administrator had been himself adjudged trustee.

If he do not  
pay, scire fa-  
cias to issue.

**SECT. 47.** If the executor or administrator, in the ca-  
mentioned, shall not voluntarily pay the amount in his han-  
plaintiff may proceed by writ of scire facias, in like mann-  
the judgment in the first suit had been against the exec-  
administrator himself, as trustee: but, if such executor or a-  
trator be discharged, he may recover costs or not, at the di-  
of the court.

Proceedings, if  
trustee die,  
within thirty  
days after judg-  
ment is render-  
ed.  
15 Mass. 473.

**SECT. 48.** If any person, against whom execution shall  
trustee, shall not be living at the expiration of thirty days af-  
judgment in the trustee suit, as provided in the eightieth sect-  
demand to be made, by force of the execution, for continu-  
attachment, may be made of the executor or administrator  
deceased person at any time, within thirty days after the a-  
ment of such executor or administrator; and it shall have th-  
effect, as if made within thirty days after the judgment.

Manner of issu-  
ing execution,  
if administrator  
be adjudged  
trustee.

**SECT. 49.** When an executor or administrator is adjudg-  
tee, for or on account of any goods, effects or credits in hi-  
or possession, merely as such executor or administrator, whe-  
a suit originally commenced against him as a trustee, or aga-  
deceased testator or intestate, and whether the judgment be  
original suit, or on a writ of scire facias, the execution shall  
served on his own goods or estate, nor on his person; but he  
be liable for the amount in his hands, in like manner, and  
same extent only, as he would have been to the principal  
ant, if there had been no foreign attachment.

Remedy on his  
bond, if he neg-  
lect to pay.

**SECT. 50.** If, after final judgment against an executor or  
istrator, for any certain sum due from him as trustee, he  
neglect to pay the same, the original plaintiff, in the foreign  
ment, shall have the same remedy for recovering the amount  
upon a suggestion of waste, or by a suit on the administration  
as the principal defendant in the foreign attachment would  
had, upon a judgment recovered by himself, for the same c-  
against the executor or administrator.

Specific articles  
in trustee's  
hands, to be de-  
livered to the  
officer.  
1821, 61, § 13.  
13 Maine, 420.

**SECT. 51.** When any person, summoned as a trustee, is  
to deliver to the principal defendant any specific articles, he  
deliver the same, or so much thereof as may be necessary,  
officer holding the execution; and the same shall be sold  
officer, and the proceeds applied and accounted for, in th-  
manner, as if they had been taken on execution in common

Remedy, if  
trustee refuse.

**SECT. 52.** If the trustee neglect or refuse to deliver the  
or sufficient to satisfy the execution, the judgment credito-  
have his remedy on a scire facias, as provided in sections, fir-  
enty four to seventy nine inclusive, of this chapter; and the  
his remedy for any overplus belonging to him, as at common

Mode of set-  
tling the value,  
as between the  
principal and  
trustee.  
1821, 61, § 13.

**SECT. 53.** Whenever, by the terms of the contract betwe-  
trustee and the principal debtor, any mode of ascertaining the  
of the property, to be delivered to the officer, shall hav-  
pointed out, it shall be the duty of the officer, on the applica-  
the trustee, to notify the principal debtor, previously to the  
ery, that the value may be thus ascertained, as far as it may

the performance of the contract: and, in other cases, the value of the property, as between the principal and the trustee, shall be estimated and ascertained by the appraisal of three disinterested men, one to be chosen by the trustee, one, by the officer, and one, by the principal, if he see cause; and, if he neglect or refuse, then the officer shall appoint two of said appraisers; and they shall all be duly sworn, to appraise the same; and the officer, justice and appraisers, shall certify their respective doings on the execution.

**SECT. 54.** When a part of such goods and articles shall be taken in execution, as aforesaid, the trustee may deliver the residue to the principal, or tender the same to him, within thirty days after satisfaction of the execution, in the same manner, as he might have delivered the whole.

**SECT. 55.** Any surplus money, remaining in the hands of the officer, after satisfying the execution and fees, shall be paid over to the principal, if within his precinct; and, if not, then to the trustee.

**SECT. 56.** Whenever a judgment creditor has caused the debtor to be committed in execution, and may afterwards discover goods, effects, or credits of the debtor, not attachable by the ordinary process of law, he may have the benefit of the trustee process, provided this chapter, in the like manner as any other creditor; provided, that within seven days after the service of such process, he shall discharge the body of the debtor from prison, by a written direction to the jailer, stating the occasion and reason of the discharge.

**SECT. 57.** Such discharge shall not annul, or affect the judgment.

**SECT. 58.** When any person, summoned as a trustee, shall, in his inclosure, state, that he had, at the time the process was served on him; in his possession, property not exempted by law from attachment, but that the same was mortgaged, pledged or delivered to him by the principal defendant, to secure the payment of a sum of money due to such supposed trustee, and that the principal defendant has a subsisting right to redeem the same by payment of such money, the court or justice, before which the action is pending, shall order and decree, that, on payment or tender of such money, by the plaintiff to said alleged trustee, within such time as the court shall order, and while the right of redemption exists, the person, so summoned, shall deliver over the property to the officer serving the process, to be held and disposed of in like manner, as if it had been attached on mesne process; and, in default thereof, that he shall be charged as the trustee of the principal debtor; which order and decree shall be entered on the records of such court or justice.

**SECT. 59.** On the return of the scire facias against such alleged trustee, if it shall appear, that the plaintiff has, on his part, complied with the order and decree of the court or justice, and that such alleged trustee has refused or neglected to comply therewith, then the court or justice shall enter up judgment against him, for the amount of the sum due, and returned unsatisfied on the execution, if there should appear to be in his hands such an amount of property mortgaged, over and above the sum received by such mortgagee or pledgee; but if not, then for the amount of said property, so exceeding the above sum, if any; which amount of excess

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If part only be taken, the balance to be delivered to the principal.  
1821, 61, § 13.

Officer to restore surplus proceeds of sale.  
1821, 61, § 13.

Trustee process, after commitment of the debtor.  
1821, 61, § 16.  
14 Mass. 157.  
1 Greenl. 153.  
13 Maine, 420.

Effect thereof.  
1821, 61, § 16.

Proceedings, if trustee disclose property mortgaged to him.  
1835, 188, § 1.  
16 Mass. 318.  
13 Maine, 423.

Same subject.  
1835, 188, § 1.

**CHAP. 119.** shall, on the trial of the scire facias, be determined by the court or jury.

Same subject.  
1835, 188, § 1.

**SECT. 60.** If, by the disclosure, it appear, that the property in the hands of the supposed trustee was mortgaged, pledged or subject to a lien to indemnify him against any liability, or secure the performance of any contract or condition, and, that the principal defendant has a subsisting right of redeeming the same, the court may order and decree, that, upon the discharge of such liability, or performance of such contract or condition, by the plaintiff, within such time, as the court or justice may order, and while the right of redeeming exists, such alleged trustee shall deliver over the property to the officer, to be by him held and disposed of, as if it had been attached.

Same subject.  
1835, 188, § 1.

**SECT. 61.** It shall be the duty of the officer, selling on execution any personal property delivered to him in virtue of this chapter, after deducting the fees and charges of sale, to pay the plaintiff the sum, by him paid or tendered to the trustee, or applied in the performance of the contract or condition, or discharge or extinguishment of the liability before mentioned, and the interest from the time of such payment, tender or application to the time of sale, and so much of the residue as may be required therefor, he shall apply in satisfaction of the plaintiff's judgment, according to law, and he shall pay over the balance, if any, to the debtor; the trustee to receive of the officer his costs, accruing before the service of the scire facias, as before provided in the sixteenth and seventeenth sections of this chapter.

Trustee not prevented from selling the property mortgaged.

**SECT. 62.** Nothing, contained in this chapter, shall prevent the trustee from selling the goods in his hands, for the payment of the sum for which they were mortgaged, pledged or otherwise liable, at any time before the amount due to him was paid or tendered, as before mentioned; provided, such sale would be authorized by the terms of the contract between him and the principal defendant.

Cases, in which a person shall not be adjudged trustee.

4 Mass. 102.  
1821, 61, § 15.  
4 Mass. 206.  
3 Mass. 289.  
5 Mass. 319.

**SECT. 63.** No person shall be adjudged a trustee in either of the following cases, namely:

*First.* By reason of having drawn, accepted, made or indorsed any negotiable bill, draft, note or other security, except in the cases provided in the sixty ninth section of this chapter;

*Second.* By reason of any money or other thing, received or collected by him, as a sheriff or other officer, by force of an execution or other legal process in favor of the principal defendant in the foreign attachment, although the same should have been demanded of him, previously, by the defendant;

7 Mass. 259.

*Third.* By reason of any money in his hands, as a public officer, and for which he is accountable, as such merely, to the principal defendant;

1 Mass. 471.  
3 Mass. 33, 68.  
4 Mass. 235.  
3 Pick. 1, 65.  
6 Pick. 120.

*Fourth.* By reason of any money or other thing, due from him to the principal defendant, unless it is, at the time of the service of the writ upon him, due absolutely, and without depending on any contingency;

2 Mass. 94.  
3 Mass. 121.  
4 Mass. 170.

*Fifth.* By reason of any debt due from him on a judgment, so long as he is liable to an execution on the judgment;

*Sixth.* By reason of any amount due from him to the principal

defendant, as wages for his personal labor, for a time, not exceeding one month; CHAP. 119.

*Seventh.* Where service was made on him by leaving a copy, and, before actual notice of such service, or reasonable ground of belief, that the same has been made, he shall have paid the debt due to the principal defendant, or given his negotiable security therefor.

**SECT. 64.** If, during the pendency of an action, the defendant is summoned as the trustee of the plaintiff, the first suit may nevertheless proceed so far as to ascertain, by a verdict or otherwise, what sum, if any, is due from the defendant; but the court may, on motion of the plaintiff in the trustee suit, continue the same for judgment, until the termination of the trustee suit, or until the attachment therein shall be dissolved by the discharge of the trustee, or satisfaction of the judgment otherwise. Proceedings, if defendant in an action pending, be summoned as trustee of the plaintiff. 3 Mass. 121.

**SECT. 65.** If the first suit be not continued, and judgment be rendered therein, the defendant shall not be adjudged afterwards a trustee, on account of the demand thus recovered against him, so long as he is liable to an execution on the judgment. Same subject.

**SECT. 66.** If, before final judgment is rendered in the first suit, the defendant in that suit shall be adjudged trustee in the other, and shall pay thereon the money demanded in the first suit, or any part of it, the fact shall be stated on the record of the first suit, and judgment therein shall be rendered for the costs due to the plaintiff, and for such part of the debt or damages, if any, as shall remain due and unpaid. Same subject. 15 Mass. 185.

**SECT. 67.** Any money or other thing, due to the principal defendant, may be attached before it has become payable, provided, it be due absolutely and without any contingency, as before mentioned; but the trustee shall not be compelled to pay or deliver it, before the time appointed therefor by the contract. Money or goods may be attached by trustee process, before they are payable.

**SECT. 68.** If the person, summoned as trustee, and liable for costs, as provided in the twenty second section of this chapter, shall not voluntarily pay them, when demanded by the officer, serving the execution, such officer shall state the fact in his return on the execution; and, if it appears by the return, that they have not been paid by any one, the court shall award execution against the person, so summoned as a trustee, for the amount of such costs. Proceedings, if trustee do not pay costs, when liable.

**SECT. 69.** If any person, summoned as trustee, shall have in his possession any goods, effects or credits of the principal defendant, which he holds under a conveyance, that is fraudulent and void, as to the creditors of the defendant, he may be adjudged a trustee on account of such goods, effects and credits, although the principal defendant could not have maintained an action therefor against him. Goods, fraudulently conveyed, may be held by trustee process.

**SECT. 70.** Every trustee shall be allowed to retain, or deduct out of the goods, effects and credits in his hands, all his demands against the principal defendant, of which he could have availed himself, if he had not been summoned as trustee, whether by way of set off on a trial, or by a set off of judgments or executions between himself and the principal defendant; and he shall be liable for the balance only, after their mutual demands are adjusted. Trustee may retain in his hands pay for any demand justly due him. 16 Mass. 473. 7 Greenl. 356.



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But not for unliquidated damages.

Form of judgment against a trustee.

Discharge of trustee, no bar to claim of principal.

Scire facias against trustee. 1821, 61, § 9. 21 Pick. 109.

Judgment on scire facias. 1821, 61, § 10.

Same subject. 1821, 61, § 10.

Same subject.

Liability for costs, if discharged on scire facias, not having been before examined. 1821, 61, § 9. 7 Greenl. 129.

If examined in the original suit, he may be examined again on scire facias.

SECT. 71. Unliquidated damages, on either side, for an or injuries, shall not be considered as embraced in the section, as a subject of set off.

SECT. 72. When any person has been adjudged trustee not be necessary to specify in the judgment the sum, for is chargeable; but if, on a writ of scire facias against him appear that he is chargeable as trustee, the sum for which chargeable shall be expressed in the judgment.

SECT. 73. If any person, summoned as a trustee, be discharged the judgment shall be no bar to an action, brought by the defendant against him for the same demand.

SECT. 74. When any person, who has been adjudged in the original action, shall not, on demand of the officer the execution, pay over and deliver to him the goods, effects and credits in his hands, and such execution shall be returned, the plaintiff may sue out a writ of scire facias against the trustee from the same court, or before the justice that rendered judgment, to show cause, why judgment and execution shall be awarded against him, and his own goods and estate, for remaining due on the judgment against the principal defendant.

SECT. 75. When such trustee, after such writ has been served on him, shall neglect to appear and answer to the writ, he shall be defaulted; and, if he shall not have been examined in the original suit, judgment shall be rendered against him for the sum, remaining due on such judgment against the principal defendant.

SECT. 76. When there shall be more than one defendant on such writ of scire facias, and they are all defaulted, not having been examined in the original suit, the court may enter up joint and several judgments, according to the circumstances of the case, in issue execution in common form.

SECT. 77. If any trustee, who has been defaulted on a writ of scire facias, shall have been examined in the original suit, judgment shall be rendered on the facts stated in his disclosure, or proved at trial, for such part, if any shall remain in his hands, of the effects and credits, for which he was chargeable as trustee, as much thereof as shall be then due and unsatisfied on the judgment against the principal defendant; but, if it shall appear, that the person paid and delivered the whole amount thereof on the writ, issued on the original judgment, he shall not be liable for costs on the scire facias.

SECT. 78. If the trustee appears and answers to the scire facias, and if he had not been examined in the original suit, he shall be liable to be examined in the same manner as he might have been on the original suit; and, if on such examination he shall be found not to be chargeable, the court shall render judgment against him for costs only, if resident in the county, where the original judgment was returnable; but, if not resident in such county, then he shall not be liable to costs, nor shall he recover any costs.

SECT. 79. If he had been examined in the original suit, the court may permit or require him to be examined anew in the original suit, on scire facias, and, in such case, he may prove any matter, pertinent to the issue.

his defence, on the scire facias; and the court may render such judgment, as law and justice require, upon the whole matter appearing on such examination and trial.

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1821, 61, § 9.  
21 Pick. 109.

SECT. 80. When any person is adjudged a trustee, if the goods, effects and credits, in his hands, shall not be demanded of him by virtue of the execution, within thirty days next after final judgment, the attachment of them by the original process shall be dissolved: and they shall be liable to another attachment in like manner, as though the prior attachment had not been made; provided, that in those cases, where the debt due from the trustee to the principal defendant is payable at a future day, or specific property is in the hands of the trustee, which he is bound to deliver at a future day, the attachment shall continue until the expiration of thirty days after such debt shall be payable in money, or the property aforesaid be demanded of the trustee.

Goods and effects liable to another attachment, if not demanded in thirty days. Exception.

SECT. 81. If there shall be no second attachment, the principal defendant in the suit may recover the goods, effects and credits, if not demanded as aforesaid within thirty days, in like manner, as if they had not been attached.

If there be no second attachment, principal may recover them.

SECT. 82. When the officer, holding the execution, cannot find the trustee in the state, a copy of the execution may be left at his dwelling house, or last and usual place of abode, with notice to the trustee, indorsed thereon, and signed by the officer, signifying that he is required to pay and deliver towards satisfying such execution, the goods, effects and credits for which he is liable; and this shall be deemed a sufficient demand for all the purposes mentioned in the two preceding sections.

Demand, how made, if trustee be out of the state.

SECT. 83. The judgment against any person as trustee shall discharge him from all demands by the principal defendant, or his executors or administrators, for all goods, effects and credits, paid, delivered, or accounted for by the trustee, by force of such judgment.

Effect of judgment against trustee.  
1821, 61, § 11.  
1 Mass. 117.

SECT. 84. If he is afterward sued for the same by the defendant, or his executors or administrators, such judgment and disposition of the goods, effects and credits as above stated, being proved, shall be a bar to the action for the amount so paid or delivered by him.

Same subject.  
1821, 61, § 11.

SECT. 85. If any person, summoned as a trustee, [as] aforesaid, upon his examination, shall wilfully and knowingly answer falsely, he shall, on due conviction, be adjudged guilty of perjury; and shall be bound to pay, to the plaintiff in the suit, the amount of the judgment he may recover against the principal defendant, if the same be unsatisfied, or for such part as is unsatisfied, with interest and costs; to be recovered in a special action on the case.

Penalty, if trustee disclose falsely.  
1821, 61, § 12.  
16 Maine, 433.

SECT. 86. If any person, summoned as trustee, shall be prevented from appearing in the original suit, by absence from the state or any other reason, deemed sufficient by the court, and a default be entered against him, he shall not be liable for any costs on the scire facias; but, on his disclosure, the court may allow him his reasonable costs and charges, to be retained or recovered in like manner, as if he had appeared in the original suit.

Trustee exempt from costs on scire facias, in certain cases.

SECT. 87. When a trustee process is issued by a municipal or police court, or a justice of the peace, the writ shall be in the form

Form, and service, of trustee process for justice courts.

**CHAP. 119.** now in use, and may contain a direction to attach property of the principal in his own hands, as well as in the hands of the persons named as trustee, and shall be served in like manner, as a trust process issued by a judicial court, seven days before the return day.

**SECT. 88.** The action may be brought in the county, where either of the supposed trustees resides; and, if brought in any other county, the action shall be dismissed, and the trustee shall recover his costs.

**SECT. 89.** When the person summoned does not appear at answer to the suit, he shall be defaulted and adjudged trustee; and be liable to costs on scire facias.

**SECT. 90.** If he appears at the return day and submits himself to examination on oath, and shall thereupon be discharged, he shall be allowed his legal costs.

**SECT. 91.** If, on such disclosure, he shall be adjudged trustee, he may retain the amount of his costs.

**SECT. 92.** When the plaintiff discontinues his suit against the principal or trustee, the trustee shall be allowed his costs.

**SECT. 93.** All subsequent proceedings in such causes shall be had, as are in this chapter prescribed, in trustee process brought to, and pending in, the supreme judicial court or district court, varying forms as circumstances may require; except as provided in the following section.

**SECT. 94.** When, in such trustee process before a municipal or police court, or a justice of the peace, the debt recovered against the principal, shall be a less sum than five dollars, the trustee shall be discharged; unless the judgment be so reduced, by means of a set off filed in the case.

**SECT. 95.** If, after a judgment has been rendered in a trustee process before a municipal or police court, or justice of the peace, the principal defendant or trustee shall remove out of the county in which it was rendered, such court or justice may issue execution against such debtor or trustee, directed to the proper officer of any other county, where he may be supposed to reside.

**SECT. 96.** When an action is brought against a trustee in a county, where the trustee resides, but where neither the plaintiff or defendant reside, and such trustee is discharged, or the action discontinued as to him, the action shall still proceed, unless it appear by plea in abatement, that such trustee was collusively included in the writ for the purpose of giving the court, in such county, jurisdiction; provided there was a legal service on the principal defendant.

In what county to be brought. 3 Fairf. 17.

Default, if trustee do not appear. 1824, 275, § 2.

Costs, if discharged. 1824, 275, § 2.

May retain costs, if adjudged trustee. 1828, 382.

Costs, on discontinuance. 1824, 275, § 3.

Subsequent proceedings. 1824, 275, § 5.

Discharge of trustee, if judgment be less than five dollars. Exception.

How execution shall issue, if defendant or trustee remove from the county. 1836, 210, § 1.

Proceedings, if trustee be discharged, living in a county different from plaintiff or defendant. 10 Mass. 343.

CHAPTER 120.

OF ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

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| <p><b>CT. 1.</b> Writs and executions to run against the estate of the deceased.</p> <p><b>2.</b> Executor or administrator personally liable for costs, after becoming a party.</p> <p><b>3.</b> Execution for costs, how awarded.</p> <p><b>4.</b> How awarded, if for damages and costs.</p> <p><b>5.</b> Costs paid, chargeable against the estate.</p> <p><b>6.</b> Proceedings, if execution be returned unsatisfied.</p> <p><b>7.</b> Administrator de bonis non, to prosecute or defend suits commenced by or against his predecessor.</p> <p><b>8.</b> Proceedings, in case of judgment recovered whilst the predecessor was in office.</p> <p><b>9.</b> Writs of error, in such cases.</p> <p><b>10.</b> Executor or administrator to prosecute or defend actions commenced by or against the deceased.</p> <p><b>11.</b> Suggestion of death on record, and appearance by him.</p> <p><b>12.</b> Citation to appear.</p> <p><b>13.</b> Nonsuit or default, if he do not appear.</p> <p><b>14.</b> Not personally liable for costs in such case.</p> <p><b>15.</b> Certain actions survive, which do not at common law.</p> <p><b>16.</b> How prosecuted after decease of a party.</p> | <p><b>SECT. 17.</b> Measure of damages, for trespass committed by the deceased.</p> <p><b>18.</b> Goods taken from an administrator by judgment in replevin, not assets.</p> <p><b>19.</b> If one of several plaintiffs or defendants die, action to proceed by or against survivor.</p> <p><b>20.</b> When all die, to proceed by or against the administrator of the last.</p> <p><b>21.</b> No executor or administrator bound to defend a suit within a year.</p> <p><b>22.</b> Such suit to be continued.</p> <p><b>23.</b> Limitation of actions against them.</p> <p><b>24.</b> Proceedings, if assets are received after four years.</p> <p><b>25, 26.</b> Uncertain or future claims, how preserved.</p> <p><b>27.</b> Action therefor, how commenced.</p> <p><b>28.</b> Judgment, and execution thereon.</p> <p><b>29.</b> Liability for unfaithful administration.</p> <p><b>30.</b> Liability of heirs and legatees in certain cases.</p> <p><b>31.</b> Actions for legacies, not hereby barred.</p> <p><b>32.</b> Proceedings, if administrator die, before completing administration.</p> <p><b>33.</b> Limitation of actions against new administrator.</p> <p><b>34.</b> Further liability if his predecessor gave no notice.</p> <p><b>35.</b> Notice by new administrator.</p> |
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**SECTION 1.** All writs of attachment and execution, against executors and administrators, for debts due from the deceased testator or intestate, shall run against the goods and estate of the deceased their hands.

Writs and executions to run against the estate of the deceased. 1821, 52, § 19. Executor or administrator personally liable for costs after becoming a party. 16 Mass. 530.

**SECT. 2.** When a judgment, for costs, shall be rendered against an executor or administrator, in any action commenced by or against him or in any action commenced by or against the testator or intestate, wherein the executor or administrator has appeared, and taken upon himself the prosecution or defence of the action, he shall be personally liable for the costs; but, in the latter case, only for costs if he took on him the prosecution or defence.

**SECT. 3.** When judgment is recovered against an executor or administrator, for costs only, the execution shall be awarded against his body, goods and estate, as if it were for his own debt.

Execution for costs, how awarded.

**SECT. 4.** When the judgment is for debt or damages, and costs added, an execution for the debt or damages shall be awarded against the goods and estate of the deceased, in the hands of the executor or administrator, and another execution for the sum due for costs,

How awarded, if for damages and costs.

**CHAP. 120.** against the goods and estate of the executor or administrator, and also against his body, as if it were for his own debt.

Costs paid, chargeable against the estate.

**SECT. 5.** All costs, paid by executors or administrators, and for which they are made personally liable, shall be allowed to them in their administration account; unless the judge of probate shall decide that the suit was prosecuted or defended without reasonable cause.

Proceedings, if execution be returned unsatisfied. 1821, 52, § 19.

**SECT. 6.** When an execution against an executor or administrator, for a debt due from the estate of the deceased, is returned by the officer, to whom it was delivered for service, unsatisfied, by reason of his being unable to find any goods or other personal estate of the deceased, the plaintiff may, upon a suggestion of waste, sue out a writ of scire facias against the executor or administrator; and, if he shall not appear after due service of the writ, and shew cause to the contrary, execution shall issue against him for the full amount of the original judgment and interest thereon; not exceeding the full amount of the waste, if it can be ascertained.

Administrator de bonis non to prosecute or defend suits commenced by or against his predecessor. 1821, 52, § 20. 5 Mass. 275.

**SECT. 7.** When an executor or administrator shall die, or be removed from office, pending an action brought by or against him, the same may be prosecuted by or against any administrator de bonis non, who shall be appointed after due notice given; and, if, after such notice, he shall not appear and become a party to the suit, judgment may be rendered against him in the same manner, as if he had voluntarily appeared; or, as if the suit had been originally commenced by or against him, and he had afterwards been nonsuited or defaulted.

Proceedings, in case of judgment recovered, whilst the predecessor was in office. 1821, 52, § 20.

**SECT. 8.** When an executor or administrator shall die, or be removed from office, after judgment shall have been rendered for or against him, a scire facias may be sued out by or against the administrator, de bonis non; and, after due service thereof, an execution may issue, accordingly, upon such judgment, in like manner as it may be done against an executor or administrator, in case of the death of a testator or intestate; except only, that the judgment against the first executor or administrator for costs, for which he was personally liable, shall be enforced only against his executor or administrator, and not against the administrator, de bonis non.

Writs of error, in such cases. 1821, 52, § 20.

**SECT. 9.** A writ of error, to correct any errors in such judgment, may be brought by or against the administrator, de bonis non, if any there be, in the same manner, as it might have been brought by or against the original executor or administrator, who was a party to such suit.

Executor or administrator to prosecute and defend actions commenced by or against the deceased. 1821, 52, § 21. 11 Pick. 389.

**SECT. 10.** In all personal actions, the cause of which by law survives, when there is only one plaintiff or one defendant, and such sole plaintiff or defendant shall die, after the commencement of the action, and before entry thereof, or after an appeal, and before entry of the appeal, or after entry, and any time before judgment, the executor or administrator of the deceased party may prosecute or defend the action, as hereafter mentioned in this chapter.

Suggestion of death on record and appearance by him.

**SECT. 11.** When the action or appeal is entered, the death of the party shall be suggested on the record, and the executor or administrator of the deceased may appear voluntarily, and prosecute or defend the action, as though it had been commenced by or against him.

- SECT. 12.** If such executor or administrator does not appear voluntarily, the court, on motion of the surviving party, shall issue a citation to such executor or administrator, to appear and take on himself the prosecution or defence of the suit. **CHAP. 120.**  
Citation to appear.
- SECT. 13.** If the executor or administrator shall not appear, at the time mentioned in the citation, after the same has been served on him, according to the order of court, he shall be nonsuited or defaulted, and judgment may be rendered against him. Nonsuit or default, if he do not appear.
- SECT. 14.** But, in such case, the executor or administrator not having taken on himself the prosecution or defence of the suit, shall not be personally liable for any costs in the action; but judgment shall be rendered, for such costs, against the estate of the deceased in his hands. Not personally liable for costs, in such case.
- SECT. 15.** In addition to actions, which survive, according to the principles of the common law, the following also shall survive, namely: actions of replevin, actions of trover, assault and battery, actions of trespass for goods taken and carried away, and actions of trespass, and trespass on the case, for damage done to real or personal property. Certain actions survive, which do not at common law. 3 Mass. 228, 321. 4 Mass. 480. 21 Pick. 250. 22 Pick. 495.
- SECT. 16.** All such actions may be originally commenced by or against executors and administrators; and, if commenced by or against the original party in his life time, they may be prosecuted or defended by his executor or administrator. How prosecuted, after decease of a party. 3 Greenl. 128.
- SECT. 17.** In actions of trespass, and trespass on the case, commenced or prosecuted against the executor or the administrator of the trespasser, the plaintiff shall be entitled to recover only for the value of the goods taken, or for the damage actually sustained. Measure of damages for trespass committed by the deceased.
- SECT. 18.** When judgment for a return, in an action of replevin, is rendered against an executor or administrator, the goods, returned by him, shall not be considered as assets in his hands, and, if they have been inventoried, such judgment and return shall be a discharge for the executor or administrator. Goods taken from an administrator, by judgment in replevin, not assets.
- SECT. 19.** When there are several plaintiffs or defendants in a personal action, the cause of which survives, and any of them shall die, the death shall be suggested on the record and the cause shall proceed, at the suit of the surviving plaintiff, or against the surviving defendant, as the case may be. If one of several plaintiffs or defendants die, action to proceed by or against survivor.
- SECT. 20.** When all the plaintiffs, or all the defendants, shall die, in such case, the action may be prosecuted, or defended, by the executor or administrator of the last surviving plaintiff, or defendant. When all die, to proceed by or against the administrator of the last.
- SECT. 21.** No executor or administrator shall be compelled in any court to defend a suit, commenced against him in his said capacity, within the term of twelve months next after taking on him such trust; unless brought for recovery of a demand, not affected by the insolvency of the estate; or unless the suit is brought, by way of appeal from the decision of the commissioners of insolvency on the estate, for the purpose of a trial at common law, to ascertain the nature or amount of the claim in dispute. No executor or administrator bound to defend a suit within a year. 1821, 52, § 18.
- SECT. 22.** All such suits, except as mentioned in the preceding section, shall be continued at the expense of the plaintiff, till the year from the time the trust was accepted shall have expired; and any tender of a debt to a creditor, within such year, shall bar any action, improperly commenced in the course of said year. Such suits to be continued. 1821, 52, § 18.

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Limitation of actions against them.

1821, 52, § 26.  
2 Fairf. 150.  
14 Maine, 254, 320.

4 Pick. 293.  
5 Pick. 140, 321.  
6 Pick. 276.  
8 Pick. 108, 394.  
11 Pick. 173.

Proceedings, if assets are received after four years.

Uncertain, or future claims, how preserved.  
1821, 52, § 27.

Same subject.  
1821, 52, § 27.

Action therefor, how commenced.

Judgment, and execution thereon.

Liability, for unfaithful administration.

Liability of heirs and legatees in certain cases.  
1821, 52, § 28.  
6 Greenl. 127.  
20 Pick. 2.

Actions for legacies, not hereby barred.  
1821, 52, § 28.

Proceedings, if administrator

**SECT. 23.** No executor or administrator, who has given notice of his appointment, according to law, shall be answerable to the suit of any creditor of the deceased, unless the action be commenced within four years from the time of his giving notice as aforesaid; excepting in the cases after mentioned.

**SECT. 24.** When assets shall come to the hands of an executor or administrator, after the expiration of said four years, he shall account for, and apply the same, in like manner, as if they had been received within said four years; and he shall be answerable at law, or to any process in the probate court, on account of new assets for the benefit of any creditor in like manner received within four years; provided, such action or process be commenced, within one year after the creditor shall have received the receipt of such new assets, and not more than four years after the same shall be actually received.

**SECT. 25.** When the demand of any creditor against the estate of any person deceased, founded on any covenant, contract or agreement, shall not accrue within the said four years, the creditor may file such demand in the probate office within said term; and the judge of probate shall direct the executor or administrator to retain in his hands assets, if there are sufficient, to satisfy the demand, unless the heirs to such estate, or devisees thereof, give bond, with sufficient surety or sureties in the opinion of the judge of probate, to such executor or administrator, to respond to the same.

**SECT. 26.** When such security is given, the executor or administrator shall not be allowed to retain in his hands assets for any other purpose; but the estate shall be liable in the hands of the heirs or devisees, or those claiming under them, to answer the said demand.

**SECT. 27.** When no bond is given, as mentioned in the twenty fifth section, then the action founded on such claim shall be brought against the executor or administrator; and, when such bond is given, the action shall be brought on the bond.

**SECT. 28.** In such action on the bond, if any thing is due to the claimant, he shall have judgment and execution thereon with costs.

**SECT. 29.** When an executor or administrator is guilty of unfaithful administration, he shall be liable to an action on his part for the same, for all damages occasioned thereby.

**SECT. 30.** Where a creditor has a demand against the estate of a person deceased on any covenant, contract or agreement, which could not be claimed until after the said term of four years from the death of the claimant, if he has not filed the same in the probate court, as mentioned in the twenty fifth section, he may have his remedy thereon; those, who inherit the estate, or the devisees thereof, against whom the demand lies, if such claim be made, within one year after the same becomes due; and not against the executor or administrator.

**SECT. 31.** Nothing in this chapter shall bar any action against an executor with the will annexed, for the recovery of any legacy, but the same may be commenced in the same manner, as they otherwise have been.

**SECT. 32.** When an executor or administrator shall die, or be removed, without having fully administered the goods and es-

the deceased, and a new administrator on the same estate shall be appointed, the time allowed for creditors of the deceased, for bringing their actions, shall be enlarged, as follows, viz: to so much of the four years, provided for the limitation of said actions, as shall have expired, while the former executor or administrator continued in office, shall be added so much time after the appointment of the new administrator, as shall make five years in the whole; and the new administrator shall not be held to answer to the suit of any creditor, commenced after the expiration of said five years, except provided in the following section.

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die, before completing administration.

**SECT. 33.** Every such new administrator shall, in all cases, be liable to the actions of the creditors, for the space of two years after he shall have given bond for the discharge of his trust, although the whole time allowed to the creditors, should thereby be extended beyond the five years.

Limitation of actions against new administrator.

**SECT. 34.** If the former executor or administrator shall not have given notice of his appointment, according to law, the new administrator shall be liable to the actions of the creditors for the space of two years, from the date of such new administrator's bond.

Further liability, if his predecessor gave no notice.

**SECT. 35.** Such new administrator shall give notice of his appointment in the same manner, as an original administrator; and, in failing so to do, he shall have no benefit from the limitations, contained in this chapter.

Notice by new administrator.

**CHAPTER 121.**

**PARTITION OF REAL ESTATE BY SUPREME JUDICIAL COURT, AND DISTRICT COURT.**

- SECT. 1. Tenants in common, &c. bound to make partition.
- 2. Petitions for partition.
- 3. Estate to be described.
- 4. Cotenants to be named, if known.
- 5. In such case, petition may be filed and served in vacation.
- 6. If cotenants be not named, court to order notice.
- 7. Notice returnable in the county where the lands lie.
- 8. New notice, in case of failure.
- 9. Persons not notified may appear, and contest, at any time before final judgment.
- 10. Guardians for the suit.
- 11. Pleadings or brief statements by respondents.
- 12. Replications.
- 13. Costs for respondent, if petitioner fail.
- 14. Costs, if petitioner hold all, or a part only, of what he alleges.
- 15. Pleadings and costs on writs of partition.

- SECT. 16. Who may join in a petition. Proceedings, if a petitioner die, or his share be alienated.
- 17. Interlocutory judgment.
- 18. Proceedings, if exceptions be filed.
- 19. Appointment of commissioners.
- 20. Petitioners' shares may be set off severally, or in common.
- 21. Commissioners to be sworn.
- 22. Appointment of guardians or agents for persons absent or incapacitated.
- 23. Commissioners to give notice.
- 24. All must act: a majority may decide.
- 25. Proceedings, if it cannot be equally divided.
- 26. Payment of expenses of partition.
- 27. New partition in certain cases, if a part owner be out of the state, and not notified by the commissioners.
- 28. Mode of proceeding.
- 29. Return of the commissioners. Acceptance and record thereof.





appear and answer to the suit, he may, on motion to the court, at any time before final judgment, be allowed to appear and defend.

SECT. 10. The court shall assign a guardian for the suit, for any infant or insane person, interested in the premises.

SECT. 11. Any person, interested in the premises, of which partition is prayed, may appear and allege jointly with the other respondents, or separately, any matter tending to show, that the petitioner ought not to have partition, as prayed for, in whole or in part; and this may be done in form of a brief statement, without formally pleading any general issue.

SECT. 12. To such brief statement the petitioner may reply, in the form of a counter brief statement, that the person thus answering as a respondent, has no interest in the premises, or right to be heard; and may also further reply any other matter to show the insufficiency of the respondent's brief statement.

SECT. 13. If it shall appear, that the respondent has no estate or interest in the lands, the objections to the partition shall be no further a matter of inquiry, and the petitioner shall recover of the respondent the costs, attending the trial.

SECT. 14. If, on trial, it shall appear, that the petitioner holds a less share or proportion in common, than he has alleged in his petition, the respondent shall recover his costs, though judgment be rendered for the petitioner to have an assignment in severalty of the part, which he in fact holds in common; but, if it appear that the petitioner is entitled to have partition, and an assignment of the part, described in his petition, he shall recover costs of the respondent.

SECT. 15. In all actions, at common law, for partition, the like rules of proceeding shall be observed in the trial, as to the filing of brief statements and counter statements, as in cases of petition for partition; and costs shall be taxed upon like principles.

SECT. 16. Tenants in common, claiming under a common ancestor, joint tenants, and copartners may, all, or any two or more of them, join, or sever, in petitions for partition; and whenever they join, and either petitioner shall decease, or convey his share, pending the petition, the court may allow an amendment of the petition; and his name may be erased, and the names of his heirs, devisees or grantees, respectively, inserted in his stead; and they, with the other petitioners, may proceed in the cause for their respective shares; and the heirs, devisees or grantees of a several petitioner may be inserted, as petitioners, instead of the deceased or grantor.

SECT. 17. When it shall appear, on trial or default, that the petitioner is entitled to have partition for the share by him claimed, or a less share, the court shall enter the interlocutory judgment, that partition shall be made.

SECT. 18. Whenever, in the trial of a case of partition, originated by writ or petition, as before mentioned, in the district court, exceptions shall be alleged against the opinion or judgment of said court in matter of law, as provided in the eighteenth and nineteenth sections of chapter, ninety seven; or whenever a writ of error shall be sued out of the supreme judicial court to obtain a reversal of the

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test, at any time before final judgment.

Guardians, for the suit.

Pleadings, or brief statements by respondents. 1821, 37, § 4.

Replication. 1821, 37, § 4.

Costs for respondent, if petition fail. 1821, 37, § 4. 9 Mass. 372. 4 Pick. 246.

Costs, if petitioner hold all, or a part only, of what he alleges. 1821, 37, § 4.

Pleadings and costs, on writs of partition.

Who may join in a petition. Proceedings, if a petitioner die, or his share be alienated. 1826, 347, § 7. 10 Mass. 5.

Interlocutory judgment. 1821, 37, § 4. 5 Greenl. 458.

Proceedings, if exceptions be filed. 13 Mass. 211. 15 Maine, 365.

**CHAP. 121.** judgment; in each case, the opinion and decision of said supreme judicial court shall be certified to the district court, with directions to proceed in, or dispose of such cause, in conformity to such decision, so that all the proceedings in the cause in relation to the partition prayed for, or actually made, may appear on the record of the district court.

**SECT. 19.** The court, having entered the interlocutory judgment, shall appoint three or five disinterested persons, as commissioners, to make the partition, and to set off to the petitioners their share or shares belonging to them; which shall be expressed in the warrant.

**SECT. 20.** When there are several petitioners, they may have their shares set off together, or in one body; or each one may have his assigned in severalty, at his election.

**SECT. 21.** The commissioners, before proceeding to the discharge of their duty, shall be sworn before a justice of the peace, faithfully and impartially to perform it; and the justice, administering the oath, shall make his certificate thereof on the warrant.

**SECT. 22.** Where any persons, insane, or incapacitated to take care of their own business, are interested, guardians shall be appointed for them, if living in the state; and an agent or agents for all those interested, who had been out of the state, one year at the time the petition was presented, and had not then returned.

**SECT. 23.** The commissioners shall give sufficient notice of the time and place, for making the partition, to all concerned, who are known and within the state, that they may be present at the making thereof.

**SECT. 24.** All the commissioners shall be present at the performance of the duties assigned them; but the acts of a majority of them shall be valid.

**SECT. 25.** When any messuage, tract of land, or other real estate, shall be of greater value, than either party's share of the estate to be divided, and cannot at the same time be subdivided among them without great inconvenience, the same may be assigned to one of the parties; the party, to whom the same shall be so assigned, paying such sum of money to such parties, as by means thereof shall have less than their share of the real estate, as the commissioners shall award; but, in such case, the partition shall not be established by the court, until the sums, so awarded, shall be paid to the parties entitled thereto, or secured to their satisfaction.

**SECT. 26.** When partition shall be made, if any of the petitioners shall neglect, or refuse to pay his proportion of the charges attending the partition, an account of such charges shall be laid before the court, and all just proportions settled, after notice to all concerned; and the court may issue execution against the delinquents interested.

**SECT. 27.** If any part owner shall have a larger share set off to him, than his true and real interest, or more than equal in value to the proportion it was set off for, then any aggrieved partner, who, at the time the partition was made, was out of the state, and not notified in season to prevent it, may, at any time within three years after the same was made, apply to the court, which made the partition, and the court shall cause partition thereof to be made anew.

Appointment of commissioners. 1821, 37, § 2. 5 Greenl. 458.

Petitioners' shares may be set off severally, or in common. 15 Maine, 365. 10 Pick. 152.

Commissioners to be sworn. 1821, 37, § 2.

Appointment of guardians or agents for persons absent or incapacitated. 1821, 37, § 7.

Commissioners to give notice. 1821, 37, § 7.

All must act; a majority may decide.

Proceedings, if it cannot be equally divided. 1821, 37, § 9. 16 Maine, 461. 15 Pick. 364.

Payment of expenses of partition. 1821, 37, § 9.

New partition, in certain cases, if a part owner be out of the state, and not notified by the commissioners. 1821, 37, § 8.

**SECT. 28.** In such new partition, the commissioners need not make a new division of the premises; but so much, and no more, shall be taken off from any share, as the same shall be considered more than the proportion of the whole it was designed for, estimating such lands or real estate, as in the state they were in, when first divided; and, in case any improvements have been made on the part that may by such new partition be taken off as aforesaid, the partner who made such improvements shall have reasonable satisfaction made him by the partner, to whose share the same shall be added, by the estimation of the commissioners; and the court, which ordered the partition, are also empowered to issue execution for such satisfaction and the costs of the new partition, the same being first taxed and allowed by the court.

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Mode of proceeding.  
1821, 37, § 8.

**SECT. 29.** The commissioners shall make return of their proceedings under their hands, with their warrant, to the court which appointed them; and, if their doings be confirmed by the court, judgment shall be thereupon rendered, that the said partition be firm and effectual forever; and the return shall then be recorded in the clerk's office, and also in the registry of deeds, for the county or registry district, where the lands lie.

Return of the commissioners.  
Acceptance, and record thereof.  
1821, 37, § 2.

**SECT. 30.** For good and sufficient reasons, the report of the commissioners may be recommitted or set aside; whereupon the same proceedings shall be had, as before directed.

Recommitment.

**SECT. 31.** Such final judgment, confirming the partition, shall be conclusive, as to all rights both of property and possession of all parties and privies to the judgment; including all persons who might by law have appeared and answered to the petition, except as hereinafter provided.

Final judgment, how far conclusive.

**SECT. 32.** If any person, who was a part owner with the petitioner, and for whom a share is left upon the partition, should be out of the state, when the notice to him was served, and should not return in time to appear and answer to the partition, he may at any time, within three years after final judgment, apply to the same court for a new partition of the premises; and, should it appear to the court, that the share left for the applicant was less than he was entitled to, or that the part left was not, at the time of the partition, equal in value to his share in the premises, they may order a new partition; which shall be made in the manner before provided.

Part owner out of the state, during pendency of the petition, may petition for new partition in certain cases.

**SECT. 33.** If any person, who has not appeared and answered to the petition for partition, shall claim to hold in severalty the premises described therein, or any part thereof, he shall not be concluded by the judgment for partition; but may bring his action for the land claimed, against any or all of the petitioners or respondents, or of the persons holding under them, as the case may require, within the same time, in which he might have brought it, if no such judgment for partition had been rendered.

Persons claiming in severalty, who do not appear, not concluded by judgment for partition.

**SECT. 34.** When any person, who has not appeared and answered, as aforesaid, shall claim the share that was assigned or left for any of the supposed part owners in the judgment for partition, he shall be concluded by the judgment, so far as it respects the partition and the assignment of the shares, in like manner as if he had been a party to that suit; still, he shall not be prevented

How far concluded, if claiming a share set off to another person.

CHAP. 121. thereby; from bringing his action for the share claimed by him against the person to whom it was assigned, or for whom it was left

Mode of proceeding to recover such share.

SECT. 35. Such action shall be brought against the tenant in possession, in like manner as if the demandant had originally claimed the particular piece demanded, instead of an undivided part of the whole land; and it may be brought in the same time, in which might have been brought, if no judgment for partition had been rendered.

Proceedings by a part owner, for whom no share was left, to recover the same. 22 Pick. 316.

SECT. 36. If any person, who has not appeared and answered as aforesaid, shall claim any part of the premises described in the petition, as a part owner with those, who were parties to the same, or any of them, and, if the part or share, so claimed, was not known or not allowed or left for him in the partition process, he shall be concluded by the judgment, so far as it respects the partition; but he shall not be prevented from bringing an action for the share claimed by him, against each of the persons, who shall hold any part of the premises under the judgment; and, if he should prevail in such action, instead of his being entitled to a new partition of the whole premises, he shall recover against each of the persons, holding under the judgment for partition, the same proportion held by him, that the demandant was entitled to claim out of the whole premises, before partition was made.

New partition, if one shall be evicted of the part assigned to him.

SECT. 37. If any person, to whom a share shall have been assigned, or left, shall be evicted thereof by any person, who, at the time of the partition, had an elder and better title, than those who were parties to the judgment, he shall be entitled to a new partition of the residue, in like manner as if no partition had been made.

Mortgage, or other lien, attaches to the part set off in severalty.

SECT. 38. Any person, having a mortgage, attachment, or other lien on the share in common, of any part owner, shall be bound by the judgment, so far as it respects the partition; but his lien shall remain in full force upon that part, which shall have been assigned to, or left for such owner.

Indorsement of petitions.

SECT. 39. Every petition for partition, originally filed, shall be indorsed in the same manner, as original writs; and all the regulations, concerning the indorsement of writs, contained in the one hundred and fourteenth chapter, shall apply to indorsements of petitions for partition.

Lots reserved for public uses, to be set off by commissioners in making partition. 1839, 357, § 1.

SECT. 40. In any process for the partition of a tract of land, in which certain lots or proportions of such tract are reserved for public uses, the court shall also order the commissioners, appointed to made the partition, that they shall first set off, by metes and bounds, such reserved lots, or proportions, of an average quality and situation of the lands of said tract, and make return of such location into the land office, of the state, with a description of its quality and location, and then proceed to execute the other duties, assigned them by the court; and the return, being accepted by the court, and recorded as before provided, shall be valid, as a location of such reserved lands.

## CHAPTER 122.

CHAP. 122.

## OF LOCATION OF RESERVED LANDS.

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| <p><b>SECT. 1.</b> District court may appoint a committee to locate reserved lands.</p> <p>2. Committee to be sworn.</p> <p>3. Notice of their meeting.</p> <p>4. Return, acceptance, and record of their location.</p> | <p><b>SECT. 5.</b> Location may be made by the grantee and accepted by the court.</p> <p>6. Location may be made on warrant for partition.</p> |
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**SECTION 1.** When, in the grant of townships or parts thereof, there shall be certain proportions of the same reserved for the use of such township, or for public uses, and such proportions have not been located in severalty by the grantee, for the respective purposes, expressed in the grant, prior to the incorporation of such township, as a plantation or town, the district court in the county where the land lies, on the application of the assessors of such plantation or town, may appoint three disinterested persons of the county, and issue their warrant, under the seal of the court to them, requiring them, as soon as may be, to locate, in separate lots, the proportions reserved for the purposes before mentioned; and shall designate the use, for which each lot is so reserved and located in said township: such lots to be of an average quality with the residue of the lands therein.

District court may appoint a committee to locate reserved lands.  
1821, 41, § 1.

**SECT. 2.** Said committee, before acting under such warrant, shall be sworn to the faithful discharge of the duty assigned them, before a justice of the peace; and a certificate thereof shall be indorsed on the warrant.

Committee to be sworn.  
1821, 41, § 2.

**SECT. 3.** They shall also give notice of their appointment, and of the time and place of their meeting, to execute the same, by publishing the same in some newspaper in the state, to be designated by the court, and by posting up written notifications in two or more public places in the same plantation or town, at least thirty days next prior to their making such location.

Notice of their meeting.  
1821, 41, § 2.  
8 Greenl. 135.

**SECT. 4.** They shall make return of said warrant and their doings thereon, under their hands, to the next district court in the county, after having completed the service; which, being accepted by the court, and recorded in the registry of deeds, of the same county within six months, shall be a legal assignment and location of such reserved proportions, for the uses designated.

Return, acceptance, and record of their location.  
1821, 41, § 3.

**SECT. 5.** Whenever the grantee of any such lands shall sever and locate such reserved proportions thereof for the purposes mentioned in the grant, designating the use for which each lot is located, and present the same to said court, such court may confirm the same; and such location shall then be deemed legal and conclusive, after being recorded, as before mentioned.

Location may be made by the grantee, and accepted by the court.  
1821, 41, § 4.

**SECT. 6.** Or the severance and location of such reserved lands may be made and completed in the manner, prescribed in the fortieth section of chapter, one hundred and twenty one, as circumstances may render it convenient.

Location may be made on warrant for partition.

CHAPTER 123.

OF GRANTING REVIEWS.

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| <p>SECT. 1. In what cases the supreme judicial court may grant reviews.</p> <p>2. In what cases the district court may grant them.</p> <p>3. Notice.</p> <p>4. Application, where filed.</p> <p>5. Only one review to be granted.</p> <p>6. Limitation of application.</p> | <p>SECT. 7. Mode of petitioning, on the ground of newly discovered evidence.</p> <p>8. Court may stay execution, on bond being filed.</p> <p>9. Leave to prosecute a rejected claim against an insolvent estate. Limitation.</p> <p>10. Where new trial may be had.</p> |
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In what cases the supreme judicial court may grant reviews.

1821, 57, § 2.  
6 Mass. 498.  
9 Mass. 520.  
1 Greenl. 322.  
3 Greenl. 92.  
4 Greenl. 58, 534.  
6 Greenl. 412, 479.

8 Greenl. 211.  
12 Pick. 172.  
In what cases the district court may grant them.

1835, 165, § 3.  
6 Greenl. 412.  
Notice.

1821, 57, § 1.  
Application, where filed.

Only one review to be granted.

1821, 57, § 3.  
13 Mass. 490.  
Limitation of application.

1821, 57, § 3.  
2 Greenl. 114.  
Mode of petitioning, on the ground of newly discovered evidence.

6 Greenl. 479.  
Court may stay execution, on bond being filed.

1821, 57, § 5.  
1831, 502, § 3.  
11 Mass. 407.

Leave to prosecute a rejected claim against an insolvent estate. Limitation.

1821, 57, § 8.

SECTION 1. The justices of the supreme judicial court may grant a review in all civil actions, including petitions for partition originally commenced in the late court of common pleas or district court, and in which judgment has been or shall be rendered in the court or in the supreme judicial court, whenever they shall judge it reasonable, and for the advancement of justice, without being limited to particular cases; including also, prosecutions for maintenance of bastard children.

SECT. 2. Any justice of the district court may, concurrently with the supreme judicial court, grant reviews of actions, of the kinds, and in the circumstances mentioned in the preceding section in which judgment was rendered in said district court; and also in actions wherein the judgment was rendered by a justice of the peace, or municipal or police court.

SECT. 3. No review shall be granted by either court, until due notice has been given to the adverse party.

SECT. 4. The application, to the supreme judicial court, for a review may be filed in any county, and the order of notice made returnable in the county where the judgment was rendered.

SECT. 5. Not more than one review shall be granted in the same action.

SECT. 6. No review shall be granted, unless application is made therefor, within three years next after the rendition of the judgment, complained of.

SECT. 7. Whenever an application for a review is filed, if one of the grounds of application be the alleged discovery of new evidence, the substance of such new evidence, and the names of all the witnesses by whom the allegation is intended to be proved, must be stated in the application, under oath.

SECT. 8. On application for a review by a defendant in a personal action, the court may, in their discretion, stay execution on the judgment complained of, or grant a supersedeas, upon his filing in court his bond, with sureties to be approved by the court, or such person as they may appoint, in a penal sum, equal to double the amount of the damages and costs, conditioned to pay said amount, if such should be the final judgment on the review, with interest thereon from the date of said bond up to the time of rendition of judgment in the action on said bond, at the rate of twelve per cent. annually.

SECT. 9. When any person, whose claim on an insolvent estate has been rejected, in whole or in part, by the commissioners appointed by the judge of probate, by accident or mistake has omitted to give notice at the probate office, within the time by law pre-

ribed, of his intention to have his claim determined at law, said court may, after due notice to the executor or administrator on the date, if they think that justice requires it, give such applicant leave to institute a suit for recovery of his claim, at the next district court in the county, where the executor or administrator resides; but such application must be made, within two years after the return of the commissioners; and leave shall not be granted after the lapse of four years from the time administration was granted; and no distribution shall be disturbed by any judgment, which may be recovered in such action.

**SECT. 10.** Whenever a review is granted, by either of said courts, the trial shall be had in the court by which the review was granted.

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Where new trial may be had.

## CHAPTER 124.

### OF ACTIONS OF REVIEW.

- SECT. 1.** In what court, a writ of review shall be prosecuted.
- 2.** Form of the writ.
- 3.** Mode of service.
- 4.** Attachment of property.
- 5.** Entry of the action, and filing papers.
- 6, 7.** Pleadings, and issue.
- 8.** Evidence and proceedings.
- SECT. 9.** Judgment.
- 10.** Costs.
- 11.** Original attachment or bail, not continued by review.
- 12.** Form of judgment, if damages be reduced.
- 13.** Form, if damages be increased.
- 14.** Provision, in cases of replevin and set off.

**SECTION 1.** Whenever a person is entitled, as a matter of right, to a review of an action, as provided in the seventh section of the one hundred and fifteenth chapter, or whenever a review is granted by the supreme judicial court, or by the district court, a writ of review, in the former case, shall be sued out, and prosecuted in the same court in which the judgment complained of was rendered; and, in the latter case, the writ shall be sued out and prosecuted in the court, which granted the review.

In what courts, a writ of review shall be prosecuted. 1821, 57, § 4.

**SECT. 2.** It shall not be necessary, in the writ of review, to recite at length the writ and proceedings in the original suit, but it may merely contain a summons to the defendant to appear and answer to the plaintiff in the review of an action, which was brought by the plaintiff; and such suit, and the judgment therein, may be described and identified in a condensed form, so as to render it intelligible and sufficiently certain.

Form of the writ.

**SECT. 3.** Such writ of review may be served in the same manner, as other writs; or, when the defendant is not an inhabitant of, or found in the state, it may be served on the person, who appeared, or his attorney, in the original suit.

Mode of service.

**SECT. 4.** If the writ of review is sued out by the original plaintiff, he may cause the defendant's property to be attached, as might have been done in the original suit, and the form of the writ may be varied accordingly.

Attachment of property.



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Entry of the action, and filing papers.  
1821, 57, § 4.  
1826, 317, § 5.  
1 Mass. 159.  
1 Greenl. 399.

Pleadings, and issue.  
1821, 57, § 4.

Same subject.  
1821, 57, § 4.

Evidence, and proceedings.  
1821, 57, § 4.

Judgment.  
1821, 57, § 4.  
10 Mass. 218.

Costs.  
1821, 57, § 5.  
4 Mass. 614.  
1 Greenl. 255.  
2 Greenl. 397.

Original attachment, or bail, not continued by review.  
1821, 57, § 6.  
Form of judgment, if damages be reduced.

Form, if damages be increased.

Provision, in cases of replevin and set off.

**SECT. 5.** The plaintiff in review shall enter the action at the next term after it is granted, unless for special reasons the court or motion grant leave to enter it at the second term; and he shall produce in court, there to be filed, certified copies of the writ and judgment, and all proceedings in the former suit, and the originals or copies of all depositions, used and filed therein.

**SECT. 6.** The cause shall be tried on the issue joined in the former suit; but the court may allow amendments in any of the pleadings, as they might have done in the original action, or they may admit additional issues, or brief statements.

**SECT. 7.** If the former judgment was rendered on default without any issue joined, the proper pleadings shall be made on the trial of the review, and the cause be tried thereon.

**SECT. 8.** Each party may introduce any legal evidence, whether produced on the former trial or not; and the cause shall be disposed of by verdict, nonsuit, default or otherwise, as if it were original suit.

**SECT. 9.** Judgment on the review shall be given, as the merits of the cause, upon law and evidence, shall require, without regard to the former judgment, except as is hereinafter mentioned.

**SECT. 10.** The party, prevailing in the review, shall recover his costs, but this shall not prevent the court, when granting a review on petition, from imposing on him such terms as to costs, as they may deem reasonable.

**SECT. 11.** No attachment made, or bail taken, in the original action, shall be liable to satisfy the judgment, which shall be rendered on the review.

**SECT. 12.** If any sum is recovered by the plaintiff in the original action for debt or damages, and that sum is reduced on the review, the original defendant shall have judgment and execution for the difference, with his costs; or, if the former judgment has not been satisfied, one judgment may be set off against the other, and an execution shall issue for the balance.

**SECT. 13.** If the original plaintiff shall recover on the review a greater sum for debt or damage, than was awarded to him on the original judgment, he shall have judgment and execution for the excess, and costs on the review.

**SECT. 14.** In review of actions of replevin, and in actions where an offset is filed, the defendant shall be considered, so far as it respects the damages, that may be awarded to him, in the original action, or on the review, like a plaintiff in other actions.

**CHAPTER 125.**

**OF MORTGAGES, THEIR REDEMPTION AND FORECLOSURE, AND OTHER LIENS ON REAL AND PERSONAL ESTATE.**

**SECT. 1.** How mortgages of real estate are made.  
**2.** Mortgagee may enter before breach, unless otherwise agreed.

**SECT. 3.** Modes of obtaining possession by foreclosure.  
**4.** Foreclose in three years.

- SECT. 5.** Modes of foreclosing, without taking possession.
6. Mortgager may redeem within three years.
7. Form of declaring, in a suit to obtain possession on mortgage. Conditional judgment.
8. Judgment as at common law, in certain cases.
9. Form of conditional judgment.
10. Judgment for defendant, if nothing be due.
11. Action for foreclosure by executor or administrator.
12. State treasurer may discharge or foreclose mortgages, made or assigned to the state.
13. Mortgages to be assets in the hands of administrators, who are to be seized to the use of heirs.
14. Against whom action on a mortgage shall be brought.
15. Form of judgment, when condition is for some act, other than payment of money.
- 16, 17, 18. Proceedings in equity, to redeem a mortgage.
19. Court to order notice, if mortgagee be out of the state.
20. Limitation of such bill in equity.
21. Court may allow other persons joined as defendants, and notified.
22. Award of execution, on decree of court.
23. Deduction of rents and profits from the sum brought into court for redemption.

- SECT. 24.** Bill in equity, for redemption, may be filed against the state.
25. Where to be filed, and proceedings thereon.
26. On decease of a person entitled to redeem, his administrator or heir may redeem.
27. Tender to guardian of mortgagee, if under guardianship.
28. How mortgages may be discharged.
29. Redemption of mortgaged estate from purchaser of the equity of redemption.
30. Redemption of personal property mortgaged.
31. Tender of amount due, and proceedings to recover the same.
32. When mortgage of personal property must be recorded.
33. Town clerk to record the same. Fees.
34. Certain marine contracts need not be so recorded.
35. Lien on vessels, by ship carpenters and others.
36. Lien discharged, by tender of the just debt.
37. Lien on buildings erected or repaired by contract and on the land.
38. Such lien to be secured by attachment.
39. Dissolved by a tender.
40. Lien of landlord on buildings erected by the lessee.

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**SECTION 1.** Mortgages of real estate, mentioned in this chapter, include not only those, made in the usual form in which the condition is set forth in the deed, but also those made by a conveyance, appearing on its face to be absolute, with a separate instrument of release of the same date and executed at the same time.

How mortgages of real estate are made.  
5 Mass. 109.  
1 Fairf. 197.  
4 Pick. 349.  
7 Pick. 157.

**SECT. 2.** Any mortgagee, or person claiming under him, may enter on the premises, or recover possession thereof before any breach of the condition of the mortgage, when there is no agreement to the contrary; but, in such case, if the debt be afterwards paid or the mortgage redeemed, the amount of the clear rents and profits, from the time of the entry, shall be accounted for, and deducted from the amount due on the mortgage.

Mortgagee may enter before breach, unless otherwise agreed.  
3 Mass. 138.  
2 Greenl. 322.

**SECT. 3.** After breach of the condition, if the mortgagee, or any one claiming under him, is desirous of obtaining possession of the premises, for the purposes of foreclosure, he may proceed in any one of the following ways, viz :

Modes of obtaining possession for foreclosure.  
9 Mass. 256.

**First.** He may commence an action at law, and obtain possession under a writ of possession, issued on the judgment in the action, provided in the ninth section, duly executed by an officer;

1821, 39, § 1.  
6 Mass. 239.  
4 Pick. 19.  
22 Pick. 556.

**Second.** He may enter into possession, and hold the same, by

1821, 39, § 1.  
1839, 372.

CHAP. 125. consent, in writing, of the mortgager, or the person holding under him ;

13 Mass. 309.  
1821, 39, § 1.  
1839, 372.

*Third.* He may enter peaceably and openly, if not opposed, in the presence of two witnesses, and take possession of the premises in which case, a certificate of the fact and time of such entry shall be made and signed and sworn to by such witnesses before a justice of the peace ; and such written consent, and such certificate shall be recorded in each registry of deeds, in which the mortgage is or by law ought to be recorded ; and no such entry shall be effectual, unless such certificate, or consent in writing, shall be recorded within thirty days next after such entry is made.

Foreclosure in three years.  
1821, 39, § 1.

SECT. 4. Such possession obtained in either of the three modes above described, being continued for the three following years, shall forever foreclose the right of redemption.

Modes of foreclosing, without taking possession.

SECT. 5. If, after breach of the condition, the mortgagee or any person, claiming under him, is not desirous of taking and holding possession of the premises, he may proceed for the purpose of foreclosure, in either of the two following modes, viz :

1838, 333, § 1, 2.

*First.* He may give public notice in the newspaper, printed in the county, where the premises are situated, or, if there be none such, then in an adjoining county, or in the newspaper published by the printer to the state, three weeks successively, of his claim by mortgage on such real estate, describing such premises intelligibly, and naming the date of the mortgage, and that the condition in the same has been broken, by reason whereof he claims a foreclosure ; and cause a copy of such printed notice, and the name and date of the newspaper, in which it was last published, to be recorded in each registry of deeds, in which the mortgage deed is, or by law ought to be recorded, within thirty days after such last publication ; or,

1838, 333, § 1, 2.

*Second.* He may cause a copy of such notice to be served and attested as a true copy, by the sheriff of the county or his deputy, in which the mortgager or his assignee lives, if in this state, by a delivery to him in hand, or by leaving the same at his place of last and usual abode ; and shall cause the original notice and the sheriff's return thereon to be recorded, within thirty days after such service, in manner aforesaid.

Mortgager may redeem within three years.  
1821, 39, § 1.  
7 Greenl. 31.  
22 Pick. 401.

SECT. 6. The mortgager or person, claiming under him, may redeem the mortgaged premises within three years next after taking possession, or publication, or service of the notice, mentioned in the preceding sections, and, if not so redeemed, his right of redemption shall be forever foreclosed.

Form of declaring, in a suit to obtain possession on mortgage. Conditional judgment.  
2 Greenl. 322.

SECT. 7. The mortgagee and, where the mortgage has been assigned, the person claiming under him, in an action for possession, may declare on his own seizin in a writ of entry, without naming the mortgage or assignment ; and, if it shall appear to the court on default, demurrer, verdict or otherwise, that the plaintiff is entitled to the possession of the premises for breach of the condition of the mortgage, the court shall, on the motion of either party, award the conditional judgment hereinafter mentioned, unless it should appear that the tenant is not the mortgager, nor a person claiming under him.

**SECT. 8.** Should it appear, that the tenant is not the mortgager, or a person claiming under him, and the plaintiff shall prevail in the suit, the judgment may be entered for possession, as at common law, unless the plaintiff should consent, that the conditional judgment should be rendered.

Judgment as at common law, in certain cases.

**SECT. 9.** When such judgment is rendered, the court shall certify, how much is due to the plaintiff on the mortgage, and then enter judgment, that if the defendant shall, within two months after the judgment, pay to the plaintiff the sum, so found due on the mortgage, with interest and costs of suit, the mortgage shall be void, and the defendant shall hold the premises discharged of the same; otherwise, that the plaintiff shall have his execution for possession of the premises, and costs.

Form of conditional judgment.  
1821, 39, § 3.  
9 Mass. 242.  
8 Pick. 500.

**SECT. 10.** If it shall be ascertained by the court, on inquiry, that nothing is due on the mortgage, then the action shall not be sustained, but judgment shall be rendered in favor of the defendant; and he shall hold the land discharged of said mortgage.

Judgment for defendant, if nothing be due.  
2 Greenl. 322.

**SECT. 11.** When a mortgagee, or person claiming under him is deceased, the same proceedings to foreclose the mortgage may be had by the executor or administrator of such deceased person, declaring on the seizin of such deceased person, as the testator or intestate might have, if living.

Action for foreclosure, by executor or administrator.  
1821, 39, § 9.

**SECT. 12.** When a mortgage is made, or assigned to the state, the treasurer may demand and receive the money due thereon, and, by his deed of release, discharge the mortgage; and, after breach of the condition, he may, in person or by his agent, make use of the like means, for the purpose of foreclosure, which an individual mortgagee might, as specially prescribed in the third, fourth and fifth sections of this chapter.

State treasurer may discharge or foreclose mortgages made or assigned to the state.

**SECT. 13.** Lands, mortgaged to secure the payment of debts, or the performance of any collateral engagement, and the debts so secured, in case of the decease of the mortgagee or person claiming under him, shall be assets in the hands of his executors or administrators; and they shall have the same control of them, as of a personal pledge; and, whenever they shall recover seizin and possession of them, they shall be seized and possessed of the estate so recovered, to the use and behoof of the widow and heirs, or devisees of the deceased, or his creditors, as the case may be; and they, when the mortgaged premises are redeemed, receive the redemption money, and give effectual discharges for the same, and releases of the mortgaged premises.

Mortgages to be assets in the hands of administrators, who are to be seized to the use of the heirs.  
1821, 39, § 9.  
13 Mass. 509.

**SECT. 14.** An action on a mortgage deed may be brought against any person in possession of the mortgaged premises; and the mortgager, or person claiming under him, may, in all cases, be joined with him as a cotenant, whether he then has any interest or not in the premises; but he shall not be liable for any costs, when he has no estate in the premises, and makes his disclaimer thereto upon the records of the court.

Against whom an action on a mortgage shall be brought.

**SECT. 15.** When the condition of a mortgage is for doing some act, other than the payment of money, the court may vary the terms of the conditional judgment to be rendered, as circumstances may require; and award execution, unless the defendant shall,

Form of judgment, when condition is for some act, other than payment of money.

**CHAP. 125.** within two months after judgment, perform what shall be there prescribed.

Proceedings in equity, to redeem a mortgage.

1837, 286, § 1.  
17 Mass. 117.  
8 Greenl. 246.  
2 Pick. 540, 546.  
4 Pick. 6.  
5 Pick. 239.  
6 Pick. 420.  
10 Pick. 398.  
17 Pick. 47.

**SECT. 16.** Any mortgager or other person, having a right to redeem lands mortgaged, may bring his bill in equity for the redemption thereof, within the time limited in the sixth section of this chapter; and, if he shall, in his bill, offer to pay such sum as shall be found to be equitably due, or to perform such other condition, as the court may require, such offer shall have the like effect and force, as a tender of payment or performance made before the commencement of the suit; and the bill shall be sustained, without proof of such tender, provided the mortgagee, or person claiming under him, shall have refused or neglected on request, to render a true account of the sum due, before the commencement of the suit; and no costs shall be awarded against the defendant, unless it shall appear, that he unreasonably refused or neglected to render such account, when requested, of the money due, and of the rents and profits, and money expended in repairs and improvements, if any, or, in any other way by his default, had prevented the plaintiff from performing or tendering performance of the condition, before the commencement of the suit.

Same subject.  
1837, 286, § 2.  
12 Mass. 16, 514.  
17 Mass. 419.  
7 Greenl. 31.

**SECT. 17.** Whenever a sum of money, due on a mortgage, has been paid or tendered to the mortgagee, or person claiming under him, by the mortgager, or the person claiming under him, within the time limited as before mentioned, he may have a bill in equity for the redemption of the mortgaged premises, and compel the mortgagee, or person claiming under him, by a decree of the supreme judicial court, to release all his right and title in the land to the complainant; though such mortgagee, or his assignee, shall never have had actual possession of the premises for breach of the condition.

Same subject.  
1837, 286, § 2.

**SECT. 18.** Or, in such case, the mortgager or other person, having right to redeem, may have his bill in the manner prescribed in the sixteenth section of this chapter, without having made a tender before the commencement of the suit, and the cause shall be tried in the same manner.

Court to order notice, if mortgagee be out of the state.  
1837, 286, § 2.

**SECT. 19.** When the suit is brought, before an actual entry for breach of the condition, and before payment or tender, if the mortgagee, or the person claiming under him, be out of the state, and shall not have had actual notice, the court shall order proper notice to be given to the other party, and continue the cause, as long as necessary.

Limitation of such bill in equity.  
1837, 286, § 3.

**SECT. 20.** No bill in equity shall be brought for redemption of mortgaged premises, founded on a tender of payment or performance of the condition, made before the commencement of the suit, unless within three years next after making such tender.

Court may allow other persons to be joined as defendants, and notified.  
1821, 39, § 4.

**SECT. 21.** In any suit brought for redemption of mortgaged premises, when it shall appear necessary to the attainment of justice, that any other person, besides the defendant, claiming an interest in the premises, should be made a party with the original defendant, on motion, the court may order him to be served with an attested copy of the bill, in such manner as they may direct, and, on his appearance, the cause shall proceed, as though he had been originally joined.

**SECT. 22.** The court, when they shall make a decree for the redemption of mortgaged lands, shall have power to award execution, jointly or severally, as the case may require; and for such sums, as shall be found due from him or them, for rents and profits, and above the sums reasonably expended in repairing and increasing the value of the estate redeemed.

**CHAP. 125.**

Award of execution, on decree of court. 1821, 39, § 5.

**SECT. 23.** When any sum of money shall be brought into court, in a suit for redemption of mortgaged premises, the court shall have power to deduct therefrom such sum, as the defendant may be chargeable with, on account of rents and profits by him received, and costs awarded against him; and the person, to whom a sum of money is tendered to redeem such lands, if he shall receive a larger sum than he is entitled to retain, he shall refund the excess.

Deduction of rents and profits from the sum brought into court for redemption. 1821, 39, § 6. 9 Pick. 171.

**SECT. 24.** If the treasurer of the state, and the person applying to redeem any lands mortgaged to the state, shall disagree, as to the sum due thereon, the person, so applying, may bring a bill in equity against the state for the redemption thereof.

Bill in equity, for redemption, may be filed against the state. 1821, 39, § 8.

**SECT. 25.** Such suit shall be brought in the supreme judicial court; and the court shall order notice to be served on the treasurer of the state in the usual form, and the court shall hear the cause and decide, what sum is due on said mortgage to the state, and award costs, as they may deem equitable: and it shall be the duty of the treasurer to accept the sum, adjudged by the court to be due, and discharge and release such mortgage.

Where to be filed, and proceedings thereon. 1821, 39, § 8.

**SECT. 26.** If any person, entitled to redeem any mortgaged estate, or to redeem an equity of redemption, which may have been sold on execution, or the right to redeem such right, or the right to redeem lands, set off on execution, shall die without having made any tender for that purpose, a tender may be made, and a bill for redemption commenced and prosecuted, as well by the executors or administrators, as by the heirs or devisees of the deceased person; and, if the plaintiff, in any such bill in equity, shall die pending the suit, the same may be prosecuted to final judgment, by his heirs or devisees, or his executors or administrators.

On decease of a person entitled to redeem, his administrator or heir may redeem. 9 Mass. 422.

**SECT. 27.** When the mortgagee, or other person holding under him, is under guardianship, as an infant or otherwise, a tender may be made to such guardian; and he shall have power to receive the sum due on the mortgage; and, upon receiving it, or on performance of such other condition as the case may require, to execute a release or discharge of the mortgage.

Tender to guardian of mortgagee, if under guardianship. 12 Mass. 16.

**SECT. 28.** In all cases, the mortgage may be discharged by the deed of release of the person authorized to discharge it, or by his taking satisfaction and payment to be entered in the margin of the word of such mortgage, in the register's office, under his hand.

How mortgages may be discharged. 1821, 39, § 1.

**SECT. 29.** If the purchaser of an equity of redemption, sold on execution, shall have satisfied and paid to the mortgagee, or those claiming under him, the sum due on the mortgage, the mortgager, or those claiming under him, having redeemed the equity of redemption within one year after such sale, shall have a right to redeem such mortgaged estate of such purchaser, or any person claiming under him, within the time and in the manner, he might have redeemed the same of the mortgagee, had there been no such sale made, and within such time only.

Redemption of mortgaged estate from purchaser of the equity of redemption. 1821, 39, § 11.

## CHAP. 125.

Redemption of personal property mortgaged.

Tender of amount due, and proceedings to recover the same.

When mortgage of personal property must be recorded. 1839, 390, § 1. 16 Pick. 33, 462.

Town clerk to record the same. Fees. 1839, 390, § 3.

Certain marine contracts need not be so recorded. 1839, 390, § 2.

Lien on vessels, by ship carpenters and others. 1834, 104, § 1. 6 Pick. 46, 120.

Lien discharged, by tender of the just debt. 1834, 104, § 2.

Lien on buildings, erected or repaired by contract and on the land. 1837, 273, § 1. 1837, 298, § 1.

SECT. 30. When the condition of any mortgage of personal property has been broken, the mortgager, or any person lawfully claiming or holding under him, may redeem the same at any time within sixty days next after said breach, unless the property shall have been sold in the mean time, in pursuance of the contract between the parties, or on execution for the debt of the mortgagor.

SECT. 31. The person, entitled to redeem such property, shall pay or tender to the mortgagee, or person holding under him, the sum due on the mortgage, with all reasonable and lawful charges incurred in the care and custody of the property or otherwise, arising from the mortgage itself; and, if such property is not immediately restored, the person, entitled to redeem the same, may recover it in an action of replevin; or he may recover such damages, as he may have sustained by the withholding thereof, in an action of the case.

SECT. 32. No mortgage of personal property, made since the twenty fourth day of April, eighteen hundred and thirty nine, shall be made hereafter, where the debt thereby secured amounts to more than the sum of thirty dollars, shall be valid against any other persons than the parties thereto, unless possession of the mortgaged property be delivered to, and retained by the mortgagee; or unless the mortgage has been, or shall be recorded by the clerk of the town, where the mortgager resides.

SECT. 33. The clerk, on payment of his fees, shall record all such mortgages, that shall be delivered to him, in a book kept for that purpose, noting in the book, and on the mortgage, the time when the same was received; and it shall be considered as recorded when left, as aforesaid, with the clerk. His fees shall be the same as are allowed for like services, to the register of deeds.

SECT. 34. Nothing in the two preceding sections, shall avoid or defeat any contract of bottomry, or respondentia, or transfer assignment or hypothecation of any ship or goods at sea, or abroad, if the mortgagee shall take possession of such vessel or goods, as soon as may be, after the arrival of the same within the state.

SECT. 35. Any ship carpenter, caulker, blacksmith, joiner or other person, who shall perform labor or furnish materials, for or on account of any vessel, building or standing on the stocks, or under repairs after having been launched; shall have a lien on such vessel for his wages or materials, until four days after such vessel is launched, or such repairs afterwards have been completed; and may secure the same by an attachment on said vessel within that period, which shall have precedence of all other attachments.

SECT. 36. In case any such creditor shall demand or claim more for his said services performed or materials furnished, as aforesaid, than is just and reasonable, the owner, agent or contractor may tender the full, fair and just balance to such claimant, and such tender shall, if refused, absolutely discharge the lien on such vessel.

SECT. 37. Any person, who shall perform labor or furnish materials, for erecting, altering or repairing any house or other building or appurtenances, or furnish labor or materials for the above purposes by virtue of any contract with the owner thereof, or other person who had contracted with such owner, shall have a lien, to

secure the payment of the same, upon such house or building, and the lot of land, on which the same stands, and upon the right of redeeming the same when under mortgage; and such lien shall continue in force for the space of ninety days from the time, when such payment becomes due. CHAP. 125.  
16 Maine, 268.

SECT. 38. Such person may secure the benefit of such lien by an attachment of such house or building, land or right of redemption, within the said ninety days; and such attachment shall have precedence of all other attachments, not made under any such lien. Such lien to be secured by attachment.  
1857, 273, § 2.

SECT. 39. When the debtor shall tender to the creditor the sum justly due to him, as aforesaid, such lien shall cease. Dissolved by a tender.  
1857, 273, § 3.

SECT. 40. When any lot or parcel of land, or any mill privilege, may be leased for the purpose of having a house, shop, mill or other building erected or placed thereon, and rent is reserved in the lease, all the buildings erected as aforesaid, together with all the interest which the lessee before had, or may have, in the premises, by force of such lease, shall remain liable to be attached by any such lessor or his assignee to secure the rent due on such lease, notwithstanding any previous transfer of property by the lessee; provided, such attachment be made within six months from the time such rent becomes due. Lien of landlord, on buildings erected by the lessee.  
1824, 268, § 1, 2.

## CHAPTER 126.

### OF THE RIGHT OF ERECTING MILLS AND MILL DAMS, AND OF FLOWING LANDS; AND THE MODE OF OBTAINING DAMAGES THEREFOR.

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| <p>SECT. 1. Right to erect and maintain mill dams.</p> <p>2. Not to injure a mill previously built.</p> <p>3. Not on another's land without consent.</p> <p>4. Restriction, as to height of dam.</p> <p>5. Damages for flowing, recoverable, on complaint.</p> <p>6. Form of complaint.</p> <p>7. How presented and served.</p> <p>8. Service, how made.</p> <p>9. What may be pleaded in bar.</p> <p>10. Mode of trial. Appeal.</p> <p>11. Costs for respondent, if complainant fail.</p> <p>12. Proceedings, if complainant recover.</p> <p>13. Trial by jury. Commissioners' report to be evidence.</p> <p>14. Acceptance of commissioners' report.</p> <p>15. Verdict or report, to bar any future action.</p> <p>16. Compensation to commissioners.</p> <p>17. Yearly damages, how fixed.</p> | <p>SECT. 18. Security to be given for yearly damages, if required.</p> <p>19. Lien upon mill and land, for damages.</p> <p>20. Complainant may sue for damages, if unpaid.</p> <p>21. Mill and land may be seized and sold on the execution, after thirty days.</p> <p>22. Effect of such sale.</p> <p>23. Right of redemption.</p> <p>24. Either party may file a new complaint.</p> <p>25. Restriction of this right.</p> <p>26. Owner may offer an increased compensation. Consequence.</p> <p>27. Injured party may offer to accept a less compensation. Consequence.</p> <p>28. Restriction of suits for damages.</p> <p>29. Costs.</p> <p>30. Tenants may make such offers, as well as owners.</p> <p>31. Agreement of parties binding, if recorded.</p> <p>32. Judgment no bar to a new complaint.</p> |
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CHAP. 126. SECT. 33. Tender of damages, and effect thereof.  
 34. Complaint not to abate, by death of either party.

SECT. 35. If complaint abate, rights may be preserved by new complaint within a year.

Right to erect and maintain mill dams.  
 1821, 45, § 1.  
 5 Greenl. 9.  
 10 Pick. 247, 318.

SECTION 1. Any man may erect and maintain a water mill and a dam to raise water for working it, upon and across any stream that is not navigable, upon the terms and conditions, and subject to the regulations, hereinafter expressed.

Not to injure a mill previously built.  
 11 Mass. 533.  
 17 Mass. 289.  
 10 Pick. 348.  
 22 Pick. 312.

SECT. 2. No dam shall be erected to the injury of any mill lawfully existing, either above or below it, on the same stream, nor to the injury of any mill site, on which a mill or mill dam shall have been lawfully erected and used, unless the right to maintain a mill, on such last mentioned site, shall have been lost or defeated by an abandonment, or otherwise.

Not on another's land, without consent.  
 1821, 45, § 1.

SECT. 3. Nor shall any mill or dam be placed on the land of any person, without such grant, conveyance or authority from the owner, as would be necessary by the common law, if no provision relating to mills had been made by any statute.

Restriction, as to height of dam.  
 1824, 261, § 1.

SECT. 4. The height, to which the water may be raised, and the length of time, during which it may be kept up in each year, shall be liable to be restricted and regulated by the verdict of a jury, or report of commissioners, as hereinafter provided.

Damages for flowing, recoverable, on complaint.  
 1821, 45, § 2.  
 7 Greenl. 155.  
 1 Fairf. 234.  
 14 Maine, 423.  
 6 Pick. 94.  
 9 Pick. 62.  
 12 Pick. 556.  
 Form of complaint.  
 11 Mass. 462.  
 5 Pick. 182, 294.

SECT. 5. Any person sustaining damages in his lands, by their being overflowed by a mill dam, may obtain compensation for the injury by complaint to the district court in the county, where the lands so flowed shall be situated, or any part of the same; but no compensation shall be awarded for any damages, sustained more than three years before the institution of the complaint.

How presented and served.  
 1821, 45, § 2.

SECT. 6. The complaint shall contain such a description of the land, alleged to be overflowed and injured, and such a statement of the damage, that the record of the case shall show, with sufficient certainty, the matter, that shall have been heard and determined therein.

Service, how made.  
 1821, 45, § 2.

SECT. 7. Such complaint may be presented to the court in term time, or be filed in the clerk's office in vacation; and a copy thereof, in either case, shall be served on the person complained of, by being delivered to him, or left at his dwelling house, if he has any in the state; otherwise, it shall be left at the mill in question, or with the owner of the mill.

What may be pleaded in bar.  
 1821, 45, § 3.  
 3 Mass. 184.  
 5 Mass. 398.  
 4 Greenl. 322.  
 5 Greenl. 9.  
 3 Fairf. 183.  
 7 Pick. 141.

SECT. 8. Such service shall be made by the proper officer, fourteen days at least before the term, at which the complaint is to be heard.

Mode of trial. Appeal.  
 1821, 45, § 3.  
 6 Greenl. 282.

SECT. 9. The owner or occupant of such mill may appear and plead in bar to such complaint, that the complainant has no right, title or estate in the lands, alleged to be flowed; or, that he has a right to maintain such dam and flow the lands for an agreed price, or without any compensation; or any other matter, which may show, that the complainant cannot maintain the suit; but he shall not plead in bar of the complaint, that the land described therein is not injured by such dam.

SECT. 10. When any such plea is filed, and an issue in fact, or in law, is joined, it shall be heard and decided as similar issues are

be decided in cases at common law ; and either party may appeal **CHAP. 126.**  
the supreme judicial court.

**SECT. 11.** If, on any such plea, the issue is decided in favor of respondent, or the complainant shall become nonsuit, or discontinue the suit, the respondent shall be entitled to his costs, as in common actions. Costs for respondent, if complainant fail. 1821, 45, § 8.

**SECT. 12.** If the issue is decided in favor of the complainant, if the owner or occupant, after being notified as before mentioned, shall not appear, or shall be defaulted, or shall not plead or waive any legal objection to proceeding, the court shall appoint three more disinterested persons of the same county, commissioners, who shall go upon and examine the premises, and make a true and lawful appraisalment under oath of the yearly damages, if any, due to the complainant by the flowing of his lands, described in the complaint, and how far the same may be necessary ; and ascertain and make report, what portion of the year such lands ought to be flowed. Proceedings, if complainant recover. 1824, 261, § 1. 11 Mass. 363, 462. 17 Pick. 58, 70.

**SECT. 13.** If either party shall request, that a jury may be impaneled to try the cause at the bar of the court, the report of the commissioners shall, under the direction of the court, be given in evidence to the jury ; subject to be impeached by evidence from either party. Trial by jury. Commissioners' report to be evidence. 1824, 261, § 1.

**SECT. 14.** If neither party shall request a trial of the cause by jury, as before mentioned, the report of the commissioners may be accepted by the court, and judgment rendered thereon. Acceptance of commissioners' report. 1824, 261, § 1.

**SECT. 15.** The verdict of such jury, or the report of such commissioners, where no trial is requested, being so accepted, shall be a bar to any action brought for such damages ; and such owner or occupant shall not flow such lands during any portion of the period, when such flowing is prohibited by the commissioners or the jury. Verdict or report, to bar any future action. 1824, 261, § 1. 17 Mass. 76.

**SECT. 16.** The court shall have power to award reasonable compensation to such commissioners, which shall be taxed and covered by the prevailing party. Compensation to commissioners. 1824, 261, § 1.

**SECT. 17.** Such verdict or accepted report of the commissioners, and judgment thereon, shall be the measure of the yearly damages, until the owner or occupant of such lands, or the owner or occupant of such mill, shall, on a new complaint to the court, and in similar proceedings as in the former case, obtain an increase or decrease of such damages. Yearly damages, how fixed. 1821, 45, § 6.

**SECT. 18.** When any person, whose lands shall be flowed as aforesaid, shall, on filing his complaint for ascertaining or increasing the damages ; or, on bringing his action of debt, as provided in the twentieth section of this chapter, move the court to direct the owner or occupant of such mill to give security for the payment of said annual damages, as they shall become due, and the court shall so order, the owner or occupant, refusing or neglecting to give such security, shall have no benefit of this chapter ; but shall be liable to be sued for the damages occasioned by such flowing, in an action at common law. Security to be given for yearly damages, if required. 1821, 45, § 7. 11 Mass. 364.

**SECT. 19.** The person, entitled to receive such annual compensation, shall have a lien therefor, from the time of the institution of the original complaint, on the mill and mill dam, with the appurtenances. Lien upon mill and land, for damages.

**CHAP. 126.** ances and the land under and adjoining the same, and use with ; provided, that it shall not extend to any sum, due in three years before the commencement of the action.

Complainant may sue for damages, if unpaid. 1821, 45, § 6. 15 Maine, 242.

**SECT. 20.** The party, entitled to such annual compensation, may maintain an action of debt or assumpsit therefor, before the proper tribunal, against the person who shall own or occupy said mill, when the action is brought ; and shall therein recover the whole sum due and unpaid, with costs.

Mill and land may be seized and sold on the execution, after thirty days.

**SECT. 21.** The execution on such judgment, if not paid at any time within thirty days, be levied on the premises subject to the lien ; and the officer may sell the same at public auction for so much thereof in common with the residue, as shall be necessary to satisfy the execution ; proceeding in giving notice of such sale in the same manner, as in making sale of an equity of redemption upon execution.

Effect of such sale.

**SECT. 22.** Such sale shall be effectual against all persons claiming the premises by any title, which accrued within the time limited by the lien.

Right of redemption.

**SECT. 23.** Any person, entitled to the premises, may redeem the same within one year after the sale, on paying to the purchaser or the person holding under him the sum paid therefor, with interest at the rate of twelve per cent. deducting therefrom any rents and profits, which may have been received by such purchaser or person holding under him ; and may have the same process to compel the purchaser to account, as might be had against a purchaser in an equity of redemption.

Either party may file a new complaint. 1821, 45, § 6. 9 Mass. 203. 10 Mass. 72. 16 Maine, 411.

**SECT. 24.** When either party is dissatisfied with the annual compensation, established as before provided, a new complaint may be filed and similar proceedings shall be had, and conducted in the same manner, before provided in case of an original complaint.

Restriction of this right. 1821, 45, § 11.

**SECT. 25.** No new complaint shall be brought, until the expiration of one month after the payment of the then last year's compensation have become due, and one month after notice to the other party and the other party may, within that time, make an offer of compensation as herein after provided.

Owner may offer an increased compensation. Consequence. 1821, 45, § 9.

**SECT. 26.** The owner of the mill or dam, within said year, may offer in writing to the owner of the land injured, any sum of compensation to be paid thereafter for maintaining said dam ; and if the owner of the land shall not agree to accept the same, but shall bring a new complaint, for the purpose of increasing the compensation, he shall not recover any costs ; unless he shall show an increase of damages, in the manner before mentioned in this chapter.

Injured party may offer to accept a less compensation. Consequence. 1821, 45, § 10.

**SECT. 27.** The owner of the land injured may also, within the same year, offer, in writing, to the owner of the mill or dam, any sum smaller than the annual compensation established by law ; and if the owner of the mill or dam shall decline to pay such reduced compensation, he shall bring a new complaint to obtain a reduction of the same ; and he shall not recover costs, unless such compensation shall be offered for a less sum than was offered.

Restriction of suits for damages.

**SECT. 28.** No action shall be sustained at common law

recovery of damages, occasioned by the overflowing of lands as before mentioned, except in the special cases provided in this chapter, to enforce the payment of damages after they have been ascertained by process of complaint, as aforesaid. **CHAP. 126.**

**SECT. 29.** The party prevailing shall recover costs, unless when it is otherwise expressly provided.

Costs.  
3 Fairf. 345.

**SECT. 30.** Such offers may be made by or to the respective tenants or occupants of the land, and of the mill and dam in question, in a like manner and with like effect, as if made by the respective owners; except, that no agreements founded thereon shall bind the owners, unless made by their consent.

Tenants may make such offers, as well as owners.

**SECT. 31.** When an annual compensation upon the acceptance of one party, of an offer made by the other, is established and signed by the respective owners of the mill or dam, and of the land, and recorded in the office of the clerk of the court in which the former judgment was rendered, with a reference on the record to the former judgment, to the book where the agreement is recorded, such agreement shall be as binding as a verdict and judgment on a new complaint.

Agreement of parties binding, if recorded.

**SECT. 32.** A judgment against a complainant, as not being entitled to any compensation, shall be no bar to a new complaint for damages, which have arisen after the former verdict, and for compensation for damages, subsequently sustained.

Judgment no bar to a new complaint.

**SECT. 33.** In case of an original complaint, the respondent may tender and bring money into court, as in an action at common law; and with the same advantages to himself; and, if the money is accepted, the judgment shall have the same effect as if rendered on a verdict.

Tender of damages, and effect thereof.

**SECT. 34.** No complaint for flowing lands shall abate by the death of any party thereto; but the same may be prosecuted or defended by the surviving complainants or respondents, or the executors or administrators of the deceased.

Complaint not to abate, by death of either party.

**SECT. 35.** If such complaint shall be abated or defeated for want of form, or if, after a verdict for the complainant, judgment should be reversed, the complainant may bring a new complaint at any time within one year, after abatement or reversal as above stated; and thereon recover such damages, as have been sustained during the three years next before the institution of the first complaint, or any time afterwards.

If complaint abate, rights may be preserved by new complaint, within a year.

## CHAPTER 127.

### OF INQUESTS OF OFFICE, AND INFORMATIONS FOR INTRUSION.

- SECT. 1.** Proceedings, to invest in the state, lands granted on condition.  
**2.** Attorney general to file information.  
**3.** Scire facias to issue. Service.  
**4.** Judgment on default.

- SECT. 5.** Consequence of disclaimer, by defendant.  
**6.** Proceedings, if defendant claim title.

- CHAP. 127.** SECT. 7, 8. Proceedings, if it be adjudged, that defendant holds too much land.
9. Cases, in which information may be filed, without order of the legislature.
10. Notice, when there is no tenant in possession.
11. Proceedings, judgment and costs.
12. Information to recover escheats. Notice.
13. Tenant to set up no title, unless he claim under it.
- SECT. 14. Costs, if defendant recover.
15. Defendant may hold, by title subsequently acquired. What judgment, if the state recover.
16. Effect of judgment, that the be reseized.
17. Tenant under the state to betterments, though occupy less than six years.
18. Proceedings by attorney to obtain betterments.
19. Execution therefor, how levied.

Proceedings, to revest in the state, lands granted on condition. 1821, 48, § 1.

Attorney general to file information. 1821, 48, § 1.

Scire facias to issue. Service. 1821, 48, § 1.

Judgment on default. 1821, 48, § 1.

Consequence of disclaimer by defendant. 1821, 48, § 1.

Proceedings, if defendant claim title. 1821, 48, § 1. 11 Mass. 193.

Proceedings, if it be adjudged, that defendant holds too much land. 1821, 48, § 1.

Same subject. 1821, 48, § 1.

**SECTION 1.** Where lands have been granted by the colony or province of Massachusetts Bay, the commonwealth of Massachusetts, or by this state, or shall be hereafter granted on certain conditions alleged to have been violated, and the state shall claim to be revested in the same, the following proceedings shall be had.

**SECT. 2.** When the legislature shall direct, the attorney general shall file an information in the supreme judicial court in the county where the lands lie, stating the grant and conditions, breaches and claims of the state.

**SECT. 3.** The court shall issue a scire facias against the person stated, as holding the lands under such grant, returnable to said court; which shall be served, according to law, thirty days before the return day.

**SECT. 4.** Should the defendant not appear and answer to such information, judgment shall be rendered that the state be reseized of their lands.

**SECT. 5.** If the defendant appear and disclaim holding said lands or any part of the same, the attorney general shall take nothing by his information, so far as the same respects the lands disclaimed; and the defendant, and all claiming under him, shall be estopped from claiming or holding such disclaimed lands.

**SECT. 6.** If the defendant claims all or any part of such lands under such grant, and shall traverse the breaches, the cause shall be tried by jury in due course, and, if the issue be found in favor of the state, judgment shall be rendered, that the state be reseized of said estate, and for costs; but, if the issue shall be found for the defendant, he shall have judgment for his costs of suit, to be taxed and paid from the public treasury.

**SECT. 7.** If the only alleged breach of condition is, that the defendant holds more land than he has a right to hold under the grant, and the same shall be found by the jury, or the defendant's confession, the court shall assign to the defendant, by metes and bounds, so much of the land held by the defendant, as shall be equal in quantity to what he has a right to hold under the grant, and in such part thereof, as shall be judged reasonable by the court.

**SECT. 8.** Such part shall be located by persons appointed by the court, at the expense of the defendant, and a plan thereof returned to the court; and, if confirmed by the court, they shall order an attested copy of such location and plan to be filed in the land agent's office, and judgment shall be rendered, that the state be reseized of the residue, and recover costs of suit.

- SECT. 9.** In all other cases, where an inquest is necessary, the attorney general, without order of the legislature, may file an information in said court, describing the estate claimed, and stating the title asserted thereto by the state; and notice shall be given as before mentioned, when there is any tenant in possession.
- SECT. 10.** When there is not any tenant in possession, then notice shall be given, as the court shall order, at least ninety days before the sitting of the court, to which it is returnable.
- SECT. 11.** If no person shall appear and answer to the information, or, after appearing and answering, and on trial by jury, a verdict should be found, that the state has good title to such estate, judgment shall be rendered, that the state be seized thereof and recover costs; but, if the verdict should be in favor of the defendant, and that he has good title to the land, he shall recover his costs of suit, to be taxed and paid as before provided.
- SECT. 12.** The attorney general may file an information, in manner before mentioned, for recovering seizin by the state for any real estate, supposed to have escheated to the state for want of legal heirs; and on such information being filed, the court shall order such notice, as they may judge proper.
- SECT. 13.** In such case, the defendant shall not be allowed to avail himself of the title of an alien or subject of another nation or sovereign, or any other person, unless he can show that he is tenant to, or agent or bailiff of such alien.
- SECT. 14.** If on trial the defendant shall prove himself to be such tenant or agent, or that he is himself the legal owner of such estate, then he shall recover his costs, to be paid as aforesaid.
- SECT. 15.** If the defendant be found not to have been the legal owner of such estate, or to have any right as tenant, agent or bailiff, when the process was commenced against him, but had afterwards acquired a good title, or become tenant, agent or bailiff, the attorney general shall cease further to prosecute the suit; but, when the defendant proves no title to such estate as owner, or interest therein as tenant, agent or bailiff, judgment shall be rendered, that the state be seized thereof, and recover rents and profits, as in case of a writ of entry between private persons.
- SECT. 16.** When judgment shall, on information, be rendered, that the state be resealed, or seized, of any lands, the state shall be deemed and taken in law to be in fact so seized to all intents and purposes; and all judgments, so rendered, shall conclude all privies and parties, and those claiming under them, so long as such judgment shall remain in force; subject to the provisions of the following section.
- SECT. 17.** Should any person appear, and, by due process of law, prove himself to have a legal title to such estate, and recover the same against the state or its grantee or tenant, the same estate shall be liable for all expenses of improvement thereon made, over and above the rents and profits thereof; though the tenant and those claiming under the state had not been in possession six years.
- SECT. 18.** For the purpose of ascertaining the amount of such improvements, the attorney general, or the tenant or grantee of the estate, may file a bill in equity in the supreme judicial court, for

## CHAP. 127.

Cases, in which information may be filed, without order of the legislature. 1821, 48, § 2.

Notice, when there is no tenant in possession. 1821, 48, § 2.

Proceedings, judgment and costs. 1821, 48, § 2.

Information, to recover escheats. Notice. 1821, 48, § 3.

Tenant to set up no title, unless he claim under it. 1821, 48, § 3. 16 Pick. 177.

Costs, if defendant recover. 1821, 48, § 4.

Defendant may hold, by title subsequently acquired. What judgment, if the state recover. 1821, 48, § 4.

Effect of judgment, that the state be resealed. 1821, 48, § 5.

Tenant under the state, to have betterments, though occupying less than six years. 1821, 48, § 6.

Proceedings, by attorney general, to obtain betterments. 1821, 48, § 6.

**CHAP. 127.** recovering the same ; and, after due notice and a copy of the b  
 served on the defendant fourteen days before court, such court m  
 try the cause, with or without a jury, according to the principles  
 law, and render judgment and issue execution for the sum found d

Execution therefor, how levied. 1821, 43, § 6.

**SECT. 19.** The sheriff, by virtue of such execution, shall at public auction, so much of said land, as will be sufficient to isfy the execution and charges, unless otherwise paid.

**CHAPTER 128.**

**OF FORCIBLE ENTRY AND DETAINER.**

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| <b>SECT. 1.</b> Jurisdiction of justices of the peace and quorum. | <b>SECT. 4.</b> Proceedings, if defendant plead title.               |
| <b>2.</b> Warrant, and service thereof, in such cases.            | <b>5.</b> Cases, in which this process lies, for unlawful detention. |
| <b>3.</b> Judgment for complainant, and writ of possession.       | <b>6.</b> Jurisdiction of municipal and police courts.               |

Jurisdiction of justices of the peace and quorum. 1824, 268, § 1. 4 Greenl. 484.

**SECTION 1.** Any justice of the peace and of the quorum, in the county in which he resides, shall have jurisdiction in all cases of forcible entry and detainer, except those arising within a city or town therein, in which a municipal or police court is, or may be established.

Warrant, and service thereof, in such cases. 1824, 268, § 2.

**SECT. 2.** On complaint made to him, in writing and on oath, of any unlawful and forcible entry into any lands or tenements, or any unlawful and forcible detainer, he shall issue his warrant under hand and seal, directed to the sheriff or his deputy, or a constable of the town, where the person charged resides, to summon him to shew cause, why judgment should not be rendered against him ; which summons shall be served upon him, by reading the same in his presence and hearing, or by delivering him a copy, or leaving it at his last and usual place of abode, seven days at least before the day set for trial.

Judgment for complainant, and writ of possession. 1824, 268, § 1, 2.

**SECT. 3.** On return of such service, in case of the non appearance and default of the party charged, or his failing to show sufficient cause, judgment shall be rendered against him for possession of the premises, and the justice shall issue a writ of possession to remove him.

Proceedings, if defendant plead title. 1824, 268, § 3.

**SECT. 4.** Should the defendant plead not guilty to the complaint, and file a brief statement of title in himself, or some other person under whom he claims the premises in question, the justice shall thereupon order him to recognize to the complainant, with sufficient sureties, in such sum as the justice shall order, to pay all intervening damages and costs, and reasonable intervening rent for the premises ; and said justice shall require the complainant to recognize to the defendant, with sufficient sureties in a reasonable sum, conditioned to enter the action at the next district court, and prosecute the same to final judgment, and pay all costs adjudged against him ; and, if either party shall refuse so to recognize, said

ice shall enter judgment, as in case of nonsuit or default, against party, so neglecting or refusing. Either party may appeal from judgment of the justice, upon issue joined, to the next district court, recognizing, as aforesaid, to pay such costs as may be adjudged against him; and, if the defendant shall appeal, he shall recognize and pay such reasonable intervening rent for the premises, as such justice shall adjudge, in case his judgment shall not be reversed on appeal.

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Appeal.  
12 Pick. 118.

SECT. 5. Whenever a tenant, whose estate in the premises is determined, shall unlawfully refuse to quit the same, after thirty days' notice in writing, given by the lessor for that purpose, he shall be liable to the provisions of this act; provided, he shall not have been in quiet possession of the premises three whole years, immediately preceding the filing of such complaint.

Cases, in which this process lies, for unlawful detention.  
1824, 368, § 4.  
10 Mass. 403.  
13 Maine, 162, 209.

SECT. 6. Every municipal and police court, now established, or which may be established, in any city or town, shall have exclusive jurisdiction of all cases of forcible entry and detainer, arising in the city or town, where such court is or shall be established; and concurrent jurisdiction with justices of the peace and quorum, in such cases, arising in the counties in which they are or shall be respectively established.

Jurisdiction of municipal and police courts.  
1826, 324, § 1.



CHAPTER 129.

OF WASTE, AND TRESPASSES ON REAL ESTATE.

- SECT. 1. Remedy, if tenant for life or years commit waste.
- 2. Heir may sue for waste committed in his ancestor's time.
- 3. Proceedings in court thereon.
- 4. Action on the case may be brought.
- 5. Reversioner and remainder man may sue.
- 6. Such action will lie against executors or administrators.
- 7. Part owners not to commit waste, without giving thirty days notice.
- 8. Treble damages in such case, how recovered and appropriated.
- 9. Qualification of these provisions.
- 10. Trespass on lands of another, without his consent.
- 11. Waste on lands, pending an action therefor.

- SECT. 12. Trespasses on public buildings or property.
- 13. Trespasses, by taking grass, fruit or other vegetables from improved land.
- 14. Injunction, to prevent waste on lands under attachment.
- 15. Penalty, for waste on lands of a person deceased insolvent.
- 16. Liability of executor or administrator for committing such waste.
- 17. One or more tenants in common may join or sever, in actions for damages.
- 18. Notice to the other cotenants, who may become parties.
- 19. Mode of entering judgment, and awarding execution.
- 20. Scire-facias by the other cotenants, on such judgment.

SECTION 1. If any tenant in dower, or by the curtesy, or tenant for life or years shall commit or suffer any waste on the premises, the person, having the next immediate estate of inheritance therein, may have an action of waste against such tenant, wherein he shall recover the place wasted, and the amount of damages done on the premises.

Remedy, if tenant for life or years commit waste.  
8 Pick. 309.



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Heir may sue for waste done in his ancestor's time.

Proceedings in court thereon.

Action on the case may be brought.

Reversioner or remainder man may sue.

Such action will lie against executors or administrators.

Part owners not to commit waste, without giving thirty days' notice. 1821, 35, § 2. 15 Maine, 198. 22 Pick. 495.

Treble damages in such case, how recovered and appropriated. 1821, 35, § 2.

Qualification of these provisions. 1837, 288.

Trespass on lands of another without his consent. 1821, 33, § 1.

SECT. 2. An heir may bring an action for waste done in the time of his ancestor, as well as in his own time.

SECT. 3. If any issue of fact be joined in the cause, it shall be tried by a jury in court in the usual manner, with or without a view of the premises, as the court may order; and, in all cases, the jury that inquire of the waste, shall assess the damages.

SECT. 4. Any person entitled to such action of waste, may, instead of it, bring an action of the case in nature of waste, in which he shall recover the damages he has sustained by reason of the waste.

SECT. 5. Such an action may also be maintained by one, who has the remainder or reversion in fee simple or fee tail, after an intervening estate for life, and also by one who has a reversion or remainder for life or years only; and each of them shall recover such damages, as it shall appear he has suffered by the waste.

SECT. 6. An action on the case for waste, may be originally commenced against the executors or administrators of the tenant, or may be prosecuted against them after the death of the tenant, when the action was brought against him.

SECT. 7. If any joint tenant, coparcener, or tenant in common of undivided lands shall cut down, destroy, or carry away any trees, timber, wood or underwood, standing or lying on such lands, or dig up or carry away any ore, stone or other valuable thing found thereon, or commit any strip or waste thereon, without first giving thirty days' notice in writing under his hand to all other persons interested therein, or to their respective agents or attorneys, of his intention to enter thereon, and improve the land, or if he shall do any of said acts thereon, pending a petition or other suit for a partition of the same premises, he shall forfeit and pay three times the amount of the damages, that shall be assessed therefor; to be recovered and appropriated, as mentioned in the following section.

SECT. 8. The above mentioned damages may be recovered by any one or more of the cotenants, without naming any one but the plaintiff; and the damages shall be appropriated, one half to the person who shall sue for the same, and the other half to the same person, together with all the other cotenants, except the defendant in the action; to be divided among them in proportion to their respective interests in the land.

SECT. 9. If, in the trial of such cause, the jury shall find, that the defendant had good reason to believe, that he was owner of the land, on which the alleged trespass was committed, in severalty, or if he had been in the exclusive possession of the same, claiming it as aforesaid, for three years next before the time when the alleged trespass was committed, and preventing the plaintiff to occupy in common, according to his asserted right, single damages only shall be recovered in such action.

SECT. 10. If any person shall cut down, destroy, injure or carry away any fruit or ornamental trees, timber, wood, underwood, stones, gravel, ore or goods or property of any kind, from land not his own, and without license of the owner, or shall injure or throw down any fences, bars or gates, or leave such gates open, or break any glass in any building, he shall be liable in damages to the owner, to be recovered in an action of trespass.

**SECT. 11.** If, during the pendency of any action for the recovery of land, the tenant shall make any strip or waste, by cutting, felling or destroying any wood, timber, trees or poles standing on said lands, he shall, for each offence, pay to the aggrieved party treble damages, to be recovered in an action of trespass.

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Waste on lands pending an action therefor. 1821, 35, § 4. 8 Pick. 614.

**SECT. 12.** Where any trespasses are committed on any buildings or inclosures, monuments or mile stones belonging to any county, town or parish, the treasurer of such corporation may sue for the damages in the name of the corporation; and, if the property injured belongs to a school district, the treasurer of the town, in which the district is contained, may sue in the name of such district.

Trespasses on public buildings or property. 1821, 33, § 2, 4.

**SECT. 13.** If any person shall enter on any grass land, orchard or garden, and take therefrom without permission of the owner any grass, hay, fruit, vegetable or shrub, he shall be liable to the party injured, in a sum, equal to three times the value of the articles so taken away, in an action of trespass.

Trespasses, by taking grass, fruit, or other vegetables from improved land. 1821, 35, § 6.

**SECT. 14.** If any person, whose real estate is attached in any civil action, shall do any act of waste thereon, or shall threaten or make preparations to commit waste, the court, in which the suit is pending, or any justice thereof in vacation or term time, may issue an injunction to stay such waste, with or without notice at discretion; and the court may enforce obedience to such injunction by all legal process, as the supreme judicial court may legally employ in an equity case, pending in such court, and dissolve such injunction, whenever it may be deemed proper.

Injunction, to prevent waste on lands under attachment.

**SECT. 15.** If any of the heirs or devisees of any person deceased, whose estate may be represented insolvent, shall, between the time when such representation shall be made, and the time of the conveyance of the real estate of the deceased, on sale for the payment of debts, in case the estate shall be absolutely insolvent, remove or destroy any building, or cut down, destroy or carry away any trees, standing on said land, or lying on it, for timber or fire wood, except what may be necessary for fuel and repairs, or commit any strip or waste on the land, afterwards sold and conveyed as aforesaid, he shall forfeit and pay treble the value thereof; to be recovered by the executor or administrator on said estate, in an action of trespass.

Penalty for waste on lands of a person deceased, insolvent. 1835, 191, § 4. 1 Fairf. 365. 15 Maine, 205.

**SECT. 16.** If such executor or administrator, being heir or devisee as aforesaid, shall commit any of said trespasses or wastes, within the time limited as aforesaid, on proof before the judge of probate of the same, he shall be liable in damages to the same extent, as mentioned in the preceding section; and in both cases, the damages, when recovered by the executor or administrator, or found and adjudged against him by the judge of probate, shall be accounted for in the administration account.

Liability of executor or administrator for committing such waste. 1835, 191, § 4.

**SECT. 17.** All or any one or more tenants in common, coparceners, or joint tenants of any lands, may join or sever in personal actions for injuries done to the same; setting forth in the declaration the names and additions of all the other cotenants, if known.

One or more tenants in common may join or sever, in actions for damages.

**SECT. 18.** Whenever any such cotenant shall bring such action, he shall, before trial thereof, give to all the other cotenants such notice as the court shall order; and all or any of them may, at any

Notice to the other cotenants, who may become parties.

CHAP. 129. time before final judgment, become parties to the action ; and plaintiff, with such of the other cotenants as shall thus become parties, may prosecute the suit for the benefit of all concerned.

Mode of entering judgment, and awarding execution.

SECT. 19. The court shall enter up judgment for the whole amount of the injury, proved to have been done to such land, but shall award execution only for the proportion thereof sustained by the plaintiffs, actually prosecuting the suit.

Scire facias by the other cotenants on such judgment.

SECT. 20. The remaining cotenants may, afterwards, either jointly or severally, sue out a scire facias on such judgment, and execution shall be thereupon awarded for their proportion of the damages, adjudged in the original suit.

CHAPTER 130.

OF REPLEVIN OF BEASTS AND CHATTELS.

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| <p>SECT. 1. Owner of beasts distrained, may replevy them.</p> <p>2. The process.</p> <p>3. Bond to be given, before service of writ.</p> <p>4. Judgment, if the beasts be lawfully distrained.</p> <p>5. Judgment, if unlawfully distrained.</p> <p>6. Appeal.</p> <p>7. In what cases, a cause may be transferred from a justice to the district court.</p> <p>8. Any goods, unlawfully detained, may be replevied.</p> <p>9. In what courts, replevin may be brought.</p> <p>10. Bond to be given, before service.</p> | <p>SECT. 11. Judgment for a return.</p> <p>12. Assessment of damages on judgment for return of property to an attaching officer.</p> <p>13. Disposal of the money recovered by the officer.</p> <p>14. Appropriation of the moneys received by the creditor in such cases.</p> <p>15. Judgment for damages and costs, if plaintiff recover.</p> <p>16. Continuance of attachment, if the goods be replevied.</p> <p>17. When writ of reprisal shall issue.</p> <p>18. Defendant's remedy on the replevin bond.</p> <p>19. Limitation of surety's liability on a replevin bond.</p> |
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Owner, of beasts distrained, may replevy them. 1821, 80, § 1. 1834, 137, § 8.

SECTION 1. Any person, whose beasts are distrained or impounded, in order to recover any penalty or forfeiture supposed to have been incurred by their going at large, or to obtain satisfaction for any damages, alleged to have been done by them, may maintain a writ of replevin against the impounder or finder therefor, to be sued out and prosecuted before any justice of the peace for the county, in the form prescribed in chapter, one hundred and fourteen.

The process.

SECT. 2. The writ shall be sued out, served and returned, and the cause shall be heard and determined, in like manner as is provided in the case of other civil actions before a justice of the peace, except as otherwise prescribed.

Bond to be given, before service of the writ. 1834, 137, § 8.

SECT. 3. The writ shall not be served, unless the plaintiff, or some one in his behalf, shall execute and deliver to the officer a bond to the defendant, with sufficient sureties, to be approved by the officer, in a penalty double the actual value of the property to be replevied, conditioned as stated in the prescribed form of the writ, and to be returned with the writ, for the use of the defendant.

**SECT. 4.** If it shall appear upon the nonsuit of the plaintiff, or upon a trial, or otherwise, that the beasts were lawfully taken or distrained, the defendant shall have judgment for such sum, as shall be found to be due from the plaintiff for the penalty or forfeiture, or for the damages, for which the beasts were impounded, together with all the legal fees, costs and expenses incurred by reason of the distress, and also the costs of the action of replevin; or, instead of such judgment, the justice, or court having cognizance thereof, may, in his or their discretion, enter judgment for a return of the beasts to the defendant, to be held by him for the original purpose, repleviable by the plaintiff, and for the defendant's damages for the taking thereof by the replevin, and the costs of suit.

Judgment, if the beasts be lawfully distrained.  
1821, 80, § 2.

**SECT. 5.** If it shall appear, upon default of the defendant, or upon a trial or otherwise, that the beasts were taken or distrained, without any sufficient or justifiable cause, the plaintiff shall have judgment for his damages caused by the unjust taking and detaining of the beasts, and for his costs of the suit.

Judgment, if unlawfully distrained.  
1821, 80, § 2.

**SECT. 6.** Either party may appeal from the final judgment of the justice, as in other civil actions.

Appeal.

**SECT. 7.** When it shall appear, that the sum demanded for the penalty, forfeiture or damages, exceeds the sum of twenty dollars, or that the property of the beasts is in question, and that their value exceeds twenty dollars, or that the title to real estate is concerned or brought in question, the case shall, at the request of either party, be transferred either to the district court, to be there disposed of as is provided in chapter, one hundred and sixteen, with respect to other civil actions brought before a justice of the peace, in which the title to real estate is concerned, or brought in question; provided, the party, requesting such transfer, shall recognize as in actions of trespass brought before a justice of the peace, in such reasonable sum as the justice shall order, to enter the said action at the next term of the court, to which the action is transferred, and prosecute the same with effect, and to pay all intervening damages and costs.

In what cases, a cause may be transferred from a justice to the district court.  
1821, 80, § 3.

**SECT. 8.** When any goods shall be unlawfully taken, or unlawfully detained from the owner or the person, entitled to the possession thereof, or when any goods of that value, which are attached on mesne process, or taken in execution, are claimed by any person, other than the defendant in the suit, in which they are so attached and taken, such owner or person may cause them to be replevied.

Any goods, unlawfully detained, may be replevied.  
1821, 80, § 4.  
4 Greenl. 306.

**SECT. 9.** If the value of the goods aforesaid shall exceed the sum of twenty dollars, the writ may be sued out of, and returnable to the district court, or the supreme judicial court for the county, in which the goods are detained, and substantially of the form prescribed in chapter, one hundred and fourteen; and, if the goods aforesaid should not exceed the value of twenty dollars, the writ may be sued out and returnable before a justice of the peace of the county, where the goods to be replevied are detained, and substantially of the same form, but to be made applicable to the jurisdiction; and may be directed to any county where any defendant may reside; and writs, in both cases, may be sued out, served and returned like

In what courts, replevin may be brought.  
1821, 80, § 4.  
1829, 443.  
1833, 67.  
3 Mass. 199.  
7 Mass. 363.  
1 Greenl. 133.  
2 Greenl. 162.  
6 Greenl. 261.  
3 Fairf. 61, 261.

**CHAP. 130.** other writs in civil actions, in all particulars, in which a different course is not prescribed.

Bond to be given, before service.  
11 Mass. 281.  
14 Mass. 313.  
5 Pick. 226.

**SECT. 10.** The officer, before serving the writ, shall take from the plaintiff, or some one in his behalf, a bond to the defendant, with sufficient sureties, in double the value of the goods to be replevied, conditioned as in the bond described in section three; which bond shall be returned to the court from which the writ issued, with the writ, for the use of the defendant.

Judgment for a return.  
1821, 80, § 4.  
5 Mass. 343.

**SECT. 11.** If it shall appear upon the nonsuit of the plaintiff, or upon a trial or otherwise, that the defendant is entitled to a return of the goods, he shall have judgment therefor accordingly, with damages for the taking thereof by the replevin, with his costs, and a writ of return and restitution thereupon accordingly.

Assessment of damages, on judgment for return of property to an attaching officer.  
1 Mass. 421.  
2 Fairf. 66.  
11 Pick. 223.

**SECT. 12.** If the goods, when replevied, were taken in execution, or, if they were attached, and judgment be afterwards rendered for the attaching creditor, and if, in either case, the service of the execution be delayed by means of the replevin, the damages to be assessed for the defendant, in case of a judgment for a return, shall be not less than at the rate of twelve per cent. by the year, on the value of the goods, for so long time as the service of the execution shall be so delayed.

Disposal of the money recovered by the officer.  
1821, 80, § 4.

**SECT. 13.** All sums, recovered in an action of replevin by any officer, for or on account of any goods attached or taken on execution by him, or recovered in an action upon the bond given upon replevin of such goods, shall be applied and disposed of, as far as they will go, in the following manner :

*First.* To pay the lawful fees and charges of the officer and the reasonable expenses of the action of replevin, and the action on the bond, so far as they are not reimbursed by the costs, that may be recovered ;

*Secondly.* To pay to the creditor, at whose suit the goods were attached, or taken in execution, the sum, if any, recovered by him in that suit, or as much thereof as shall remain unpaid, with interest therefor, at the rate of twelve per cent. by the year, for such time, if any, as the money shall have been withheld from the creditor, or the service of his execution delayed, by reason of the replevin ; and,

*Thirdly.* If the attaching creditor, in such case, shall not recover judgment in the suit in which the attachment was made, or if any balance shall remain of the money, so recovered by the officer, after paying what is due to the creditor, as before provided, such balance or the whole amount, as the case may be, shall be applied and disposed of, in the same manner, as would and ought to have been done with the surplus, if any, of the proceeds of sale, in case the same goods had been sold on execution.

Appropriation of moneys received by the creditor, in such cases.

**SECT. 14.** All sums, received by such creditor, for the proceeds of sale of any goods, that had been attached or taken on execution, and which are afterwards returned, and all sums, received for the value of any of such goods, as are not returned, and also all sums, recovered from the officer for the insufficiency of the sureties in the bond, shall be applied toward the discharge of the judgment recovered by the creditor ; but all sums, received as interest or damages

or the delay of his execution, shall be retained to his own use, and shall not go in discharge of the judgment. **CHAP. 130.**

**SECT. 15.** If it shall appear, upon default of the defendant, or upon a trial, or otherwise, that the goods were unlawfully taken or attached, or unlawfully detained by the defendant, the plaintiff shall have judgment for his damages caused thereby, and for his costs of the suit. Judgment for damages and costs, if plaintiff recover. 5 Mass. 343.

**SECT. 16.** If the goods, which are replevied, had been attached, they shall, in case of judgment for a return, be held liable to the attachment until final judgment in the suit, in which they were attached, and for thirty days thereafter, in order to their being taken in execution; and, if such final judgment be rendered before the return of the goods, or, if the goods when replevied, were seized and held on execution, they shall be held subject to the same attachment or seizure for thirty days after the return, in order that the execution may be served thereon, or the service thereof completed in like manner, as it might have been, if the goods had not been replevied. Continuance of attachment, if goods be replevied. 1821, 80, § 4.

**SECT. 17.** When the officer, to whom the writ of return and restitution shall be directed, shall not be able to find in his precinct the beast, or other property, which by the precept is directed to be returned, he shall certify that fact in his return; and the court, whence the same issued, may, upon motion, grant a writ of reprisal, substantially of the form prescribed in chapter, one hundred and fourteen, against the plaintiff in replevin, to take the goods or beasts of the plaintiff, not exempted from attachment, of the full value, to be delivered to the defendant, and held and disposed of by him according to law, until the plaintiff shall restore the beast or other property by him taken on the writ of replevin. When writ of reprisal shall issue. 1821, 80, § 5.

**SECT. 18.** The foregoing provisions shall not preclude the defendant from resorting to his remedy, on the replevin bond, or to his remedy against the officer for the insufficiency of the sureties on the bond, to recover the value of the goods, together with the damage or loss occasioned by the replevin thereof, notwithstanding he may have endeavored to recover the same by the writs of return and of reprisal, as herein before provided. Defendant's remedy on the replevin bond.

**SECT. 19.** No action shall be maintained against any person, as surety in a replevin bond, unless the writ be served on him within one year after the final judgment in the action of replevin, or the action shall not be entered by the plaintiff, and the defendant shall not obtain judgment upon a complaint, such writ against the surety may be served on him within one year after the end of the term, at which the action of replevin ought to have been entered, and not afterwards. Limitation of surety's liability on a replevin bond.

CHAPTER 131.

OF BASTARD CHILDREN, AND THEIR MAINTENANCE.

- SECT. 1. Accusation by a woman, pregnant with a bastard child, and her examination.
- 2. Justice may issue a warrant.
- 3. Person arrested, to give bond.
- 4. On refusal, to be committed.
- 5. Cause to be continued, in certain cases.
- 6. Surrender of principal by his sureties, and proceedings.
- 7. Declaration to be filed, and form thereof.
- SECT. 8. When complainant may be a witness.
- 9. Proceedings, if respondent be judged guilty.
- 10. To be discharged, if adjudged guilty.
- 11. Complainant not to settle with father, if the overseers of poor object.
- 12. Discharge of the father from imprisonment, on taking the debtor's oath.
- 13. Liability, after such discharge.

Accusation, by a woman pregnant with a bastard child, and her examination.  
 1821, 72, § 1.  
 16 Maine, 38.  
 6 Pick. 104.  
 13 Pick. 284.

SECTION 1. When any woman, being pregnant with a child which, if born alive, may be a bastard, or who has been delivered of a bastard child, shall accuse any man of being the father thereof before any justice of the peace, and request a prosecution against the person accused, such justice shall take her accusation and examination, on oath, respecting the person accused, and the time and place, as correctly as either can be described, when and where the child was begotten, and all such other circumstances, as he may deem useful in the discovery of the truth.

Justice may issue a warrant.  
 1836, 210, § 2.

SECT. 2. Such justice may issue his warrant for the apprehension of such person, directed to the sheriff of any county, in which the person accused is supposed to reside, accompanied by such accusation and examination.

Person arrested, to give bond.  
 1821, 72, § 1.  
 7 Mass. 340.  
 396.  
 2 Greenl. 165.  
 3 Greenl. 433.  
 18 Pick. 257.  
 20 Pick. 86.  
 On refusal, to be committed.

SECT. 3. When the person is brought before such or any other justice, he may require him to give bond, with sufficient sureties, in such reasonable sum as he shall order, to the complainant, conditioned for his appearance at the next district court to be held in the county in which she resides, and for his abiding the order of court thereon.

Cause to be continued, in certain cases.  
 1821, 72, § 1.  
 12 Pick. 196.

SECT. 4. If the accused person shall refuse or neglect to give such bond, said justice shall commit him to the jail of the county of such justice, until such bond shall be given.

Surrender of principal by his sureties, and proceedings.  
 1836, 210, § 2.

SECT. 5. If, at such next, or any subsequent court, the complainant shall not have been delivered of her child, or be unable to attend court; or for other good reason, the cause may be continued, and the bond shall remain in force, until final judgment, unless it shall become void, as mentioned in the following section.

Declaration to be filed, and form thereof.  
 1 Greenl. 304.  
 6 Greenl. 460.  
 3 Fairf. 27.

SECT. 6. The sureties of the accused may surrender him in court at any time before final judgment, and thereupon they shall be discharged: and he shall be committed, until a new bond shall be given.

SECT. 7. Before proceeding to trial, the complainant must file a declaration, stating that she had been delivered of a bastard child, which was begotten by the accused; the time and place, when and where, it was begotten, with as much precision as the case will admit; that, being put on the discovery of the truth during the time of her travail, she accused the respondent of being the father of the child, and that she had been constant in such accusation.

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**SECT. 8.** When the complainant, having made the said accusation, and been examined on oath as before mentioned, and being it upon the discovery of the truth, respecting the same accusation the time of her travail, shall thereupon accuse the same man with being the father of the child, of which she is about to be delivered, and shall continue constant in such accusation, and shall prosecute him as the father of such child before such court, the man shall be held to answer to such complaint, and she shall be a witness at the trial of the cause, unless she would be an incompetent witness in any other cause, by reason of a conviction of some crime.

When complainant may be a witness.  
1821, 72, § 1.  
5 Mass. 517.  
8 Greenl. 163.  
3 Pick. 194.  
5 Pick. 63.  
8 Pick. 560.  
17 Pick. 380.  
20 Pick. 99.  
21 Pick. 132.

**SECT. 9.** If, on such issue, the jury shall find the respondent guilty, or if the facts in the declaration filed, shall be admitted by default or on demurrer, he shall be adjudged, by the court, the father of such child, and stand charged with the maintenance thereof, with the assistance of the mother, as the court shall order; and shall give a bond with sufficient sureties, and approved by the court, to the complainant, to perform the said order, and also a bond with sufficient sureties approved as aforesaid, to the town that might be chargeable for the maintenance of such child; and he shall be committed till he shall make and execute such bonds: which latter bond shall be deposited with the clerk of the court for the use of such town.

Proceedings, if respondent be adjudged guilty.  
1821, 72, § 1.  
2 Greenl. 165.

**SECT. 10.** If, on trial of said cause, the jury shall find the respondent, not guilty, the court shall order him to be discharged; and the verdict in either case shall be final.

To be discharged, if adjudged not guilty.  
1821, 72, § 1.

**SECT. 11.** No woman, whose accusation and examination, on oath, shall have been taken by a justice of the peace at her request, as aforesaid, shall be allowed to make any settlement with the father, or give him any discharge, which shall be given in evidence at the trial of any such complaint to bar or affect the same, if it shall be objected to in writing by the overseers of the poor of the town; interested in the support of such mother or child.

Complainant not to settle with the father, if the overseers of the poor object.  
1821, 72, § 1.

**SECT. 12.** When the father of such bastard child shall have remained ninety days in jail, without being able to comply with the order of court, he may be liberated, by taking the poor debtor's oath, in the same manner, as persons, now or hereafter, may, who are committed on execution; provided, he shall give the like notification of his intention to take the benefit of said oath, to be served on the complainant, if then living, and also on the clerk of the town, where the child, of which he has been adjudged the father, is its legal settlement, if in this state; said notice to be given ten days before the day appointed for taking the oath.

Discharge of the father from imprisonment, on taking the poor debtor's oath.  
1831, 487, § 1.

**SECT. 13.** The mother of such child and said town, may, after such liberation of such prisoner, recover of him by action of debt, any sum of money, which ought to have been paid pursuant to the order of court.

Liability, after such discharge.



## CHAPTER 132.

## OF PERSONAL PROPERTY SEIZED, AND LOST GOODS; AND PROCEEDINGS THEREON.

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| <p>SECT. 1. Seizure of forfeited personal property, by the person entitled thereto.</p> <p>2. To be restored to claimant, on his giving bond.</p> <p>3. Appraisal thereof.</p> <p>4. Inventory and appraisal, if there be no claimant.</p> <p>5. Libel in the district court, if value exceed twenty dollars.</p> <p>6. Notice of libel, how given.</p> <p>7, 8. Proceedings, and decree thereon.</p> <p>9. Libel before a justice, if the value be less than twenty dollars.</p> | <p>SECT. 10. Appeal, and proceedings.</p> <p>11. Decree to be affirmed, if appeal be not prosecuted.</p> <p>12. Depositions may be used.</p> <p>13. Duty of finder of goods, worth three dollars or more.</p> <p>14, 15. Duty of finder of goods, worth ten dollars or more.</p> <p>16. Proceedings, if owner appear in one year.</p> <p>17. If no owner appear, how disposed of.</p> <p>18. Penalty, if finder neglect.</p> |
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Seizure of forfeited personal property by the person entitled thereto.  
1821, 81, § 1.

SECTION 1. When any personal property shall be forfeited for any offence, and no special mode is prescribed for recovering the same, any person entitled thereto, in whole or in part, may seize and keep the same until final judgment, unless they are restored on the bond, as hereinafter mentioned.

To be restored to claimant, on his giving bond.  
1821, 81, § 1.

SECT. 2. If the person claiming the same for himself or another, shall give bond with sufficient surety or sureties to the party seizing, to pay the appraised value thereof, when, and if, the same shall be decreed forfeited, then the same shall be restored to such owner or claimant.

Appraisal thereof.  
1821, 81, § 1.

SECT. 3. The value shall be ascertained by the appraisement of three disinterested men, mutually chosen by the parties; or if they cannot agree, by a justice of the peace of the same county.

Inventory and appraisal, if there be no claimant.  
1821, 81, § 1.

SECT. 4. If no person claims the property, after it has been so seized, the party seizing, shall cause an inventory and appraisement of the same, to be made by three disinterested persons, under oath, appointed by a justice of the same county; which value shall be the rule for deciding, where the libel shall be filed.

Libel in the district court, if value exceed twenty dollars.  
1821, 81, § 2.

SECT. 5. If the property seized shall exceed twenty dollars, the party seizing shall, within twenty days after the seizure, but not afterwards, file a libel in the office of the clerk of the district court in the county, where the offence was committed, stating the cause of seizure and praying for a decree of forfeiture. The clerk shall, thereupon, make out a notice to all persons to appear at such court at the time appointed, to shew cause, why such decree should not be passed.

Notice of libel, how given.  
1821, 81, § 2.

SECT. 6. Such notice shall be published in some newspaper, printed in the same county, if there be one, if not, in an adjoining county, or in the newspaper, published by the printer to the state, at least fourteen days before the time of trial.

Proceedings, and decree thereon.  
1821, 81, § 2.

SECT. 7. The court may, where there is a claimant, hear and determine the cause by a jury, or without if the parties agree; but, where there is no claimant, the court shall decree the forfeiture and disposition of the property, according to law, and a sale and distri-

tion of the proceeds, after deducting all proper charges; and may allow costs against the claimant.

**SECT. 8.** If the libel shall not be supported, or be discontinued, the court shall decree a restoration of the property, with costs. And if the jury, or the court, shall find the seizure, without probable cause, reasonable damages also shall be decreed for the complainant.

Same subject.

**SECT. 9.** When the property seized shall not exceed the value of twenty dollars, the libel shall be filed before a justice of the peace of the county, where the offence was committed; and, after notice of the kind, mentioned in the fifth section, has been posted at two or more public places in the same county, seven days at least before the day of trial, such justice shall try and decide the cause, and make such decree therein, as the law requires.

Libel before a justice, if the value be less than twenty dollars. 1821, 81, § 3.

**SECT. 10.** Either party may appeal to the next district court in the same county, recognizing accordingly as in other cases of appeal; which court may decide the same, and decree what law and justice shall require.

Appeal and proceedings. 1821, 81, § 3.

**SECT. 11.** If the appeal shall not be prosecuted, the court, on complaint, may affirm the decree of the justice, with costs.

Decree to be affirmed, if appeal be not prosecuted. 1821, 81, § 3.

**SECT. 12.** In such cause, depositions, duly taken, may be used before the justice, or the district court.

Depositions may be used. 1821, 81, § 3.

**SECT. 13.** Whoever shall find any money or goods, of the value of three dollars, or more, the owner whereof is unknown, shall, within ten days next following, give notice thereof in writing to the clerk of the town in which they are found, and cause a notification thereof to be posted up in some public place in the same town; and, if there be any public crier in such town, shall cause the same to be cried publicly therein on three several days.

Duty of finder of goods, worth three dollars or more. 1821, 130, § 1.

**SECT. 14.** If the money or goods, so found, be of the value of ten dollars or more, the same shall be cried, and notice given thereof by posting as aforesaid in two towns adjoining, in addition to the requirement in the preceding section.

Duty of finder of goods worth ten dollars or more. 1821, 130, § 1.

**SECT. 15.** Every finder of lost goods, of the value of ten dollars or more, shall also, within two months after finding, and before selling the same to their disadvantage, procure, from the town clerk or a justice of the peace, a warrant, directed to two persons, not interested, except as inhabitants of the town, to be appointed by said clerk or justice of the peace, returnable within seven days on the date, into the town clerk's office, to appraise the said goods under oath.

Same subject. 1821, 130, § 2.

**SECT. 16.** If the owner of such lost money or goods appear, within one year after notice given to said clerk as aforesaid, and all give reasonable evidence of his right thereto, to the finder, he shall have restitution of the same or the value thereof; allowing and paying all necessary charges, including a reasonable compensation to the finder for his trouble; to be liquidated and adjudged by the justice of the peace in the county, if the owner and finder do not agree.

Proceedings, if the owner appear in one year. 1821, 130, § 3.

**SECT. 17.** If no owner shall appear, within one year as aforesaid, then such money or lost goods shall remain to the finder, he paying one half of the value thereof, all necessary charges having been first deducted, to the treasurer of said town; and, in case of

If no owner appear, how disposed of. 1821, 130, § 3.

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Penalty, if finder neglect.  
1821, 130, § 6.

**SECT. 18.** If any finder of any lost money or goods, of value of three dollars or upwards, shall neglect to give notice thereof to the town clerk, and cause the same to be cried and advertised, in time and manner, as provided in the thirteenth and fourteenth sections of this chapter, he shall forfeit the full value of such money or goods, one half to the use of the town, and the other half to him who shall sue for the same; and shall moreover remain responsible to the owner of such lost money or goods.

## CHAPTER 133.

### OF DEPOSITIONS, AND MODES OF TAKING THEM; AND OF WITNESSES.

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| <p><b>SECT. 1.</b> In what cases, depositions may be used.</p> <p>2. Before whom they may be taken.</p> <p>3. When a cause is deemed, pending, for the purpose.</p> <p>4. Reasons, for which they may be taken and used.</p> <p>5. Summons to deponent, and citation to the adverse party.</p> <p>6. Service of such citation.</p> <p>7. Who is to be considered attorney of the adverse party.</p> <p>8. Notice to one of the adverse party, sufficient.</p> <p>9. Time of notice.</p> <p>10. Verbal notice, by the justice or notary.</p> <p>11. Form of citation to adverse party.</p> <p>12. Form of summons to deponent.</p> <p>13. Witness may be compelled to give his deposition.</p> <p>14. How depositions may be taken, out of the state.</p> <p>15. Deponent to be sworn, before examination.</p> <p>16. Who may write the deposition.</p> <p>17. Form of caption.</p> <p>18. Deposition to be delivered in court, or sealed up.</p> <p>19. Not to be used, if the reason for taking it no longer exists.</p> <p>20. Objections to competency of a witness, or to questions proposed, when to be made.</p> <p>21. When depositions may be used in a second suit.</p> <p>22. When depositions may be used, taken out of the state.</p> <p>23. Commissions to take depositions out of the state.</p> | <p><b>SECT. 24.</b> Witnesses may be compelled to give depositions in cases of contested elections.</p> <p>25. Application for taking a deposition in perpetuam.</p> <p>26. Notice to persons interested.</p> <p>27. Deposition, how taken, and certify thereon.</p> <p>28. To be recorded.</p> <p>29. When it may be used in evidence.</p> <p>30. Such depositions may be taken, out of the state.</p> <p>31. Application to the court for a commission therefor.</p> <p>32. Notice to persons interested.</p> <p>33. Court may issue a commission.</p> <p>34. Deposition to be taken upon interrogatories.</p> <p>35. Application may be filed in vacation, and notice given.</p> <p>36. Proceedings, to compel a deponent to appear, to give his deposition.</p> <p>37. Punishment, if he refuse to depose.</p> <p>38. Certain deponents may affirm.</p> <p>39. If a false deposition be given, it is to be deemed perjury.</p> <p>40. Witnesses may be summoned into another state to testify in criminal cases.</p> <p>41, 42. Mortgagee to disclose the amount due on the mortgage, to an attaching creditor of the mortgager.</p> <p>43. May be compelled to give his deposition.</p> <p>44. Who are competent witnesses.</p> <p>45. How records of courts of other states are to be authenticated.</p> |
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- 46. Printed copies of Maine statutes, when proof.
- 47. Printed copies of statutes of other states, how far evidence.
- 48. Unwritten law of other states, how proved.

- 49. Laws of foreign countries, how proved.
- 50. Fees to be tendered to witnesses.
- 51. Penalty for non attendance.
- 52, 53. Manner of administering oaths.
- 54. Persons convicted of certain crimes, incompetent witnesses.

**SECTION 1.** Depositions, taken for any of the causes and in the manner hereinafter mentioned, may be used in all civil suits or cases, petitions for partition of land, libels for divorce, prosecutions for the maintenance of bastard children, petitions for review, &c. in trials before arbitrators, referees and county commissioners.

In what cases, depositions may be used. 1821, 85, § 1.

**SECT. 2.** Any justice of the peace, and any notary public, may receive depositions, to be used in any pending cause, he not being interested in such cause, nor being, nor having been, counsel or attorney in the same.

Before whom they may be taken. 1821, 85, § 1. 13 Pick. 279, 441. 14 Pick. 235.

**SECT. 3.** No suit, petition, libel or prosecution shall, for the purposes of this chapter, be considered as pending, till the writ, subpoena, libel or other process shall have been duly served upon the defendant, or such notice, as is required by law, or ordered by the court, shall have been duly given; and no deposition, taken as aforesaid, shall be used in the trial of any such cause, except by consent of parties, unless the notice, hereinafter mentioned, shall have been duly given to the adverse party.

When a cause is deemed pending, for the purpose. 1821, 85, § 1. 16 Maine, 257. 22 Pick. 309.

**SECT. 4.** Depositions to be used in pending actions, may be taken for either of the following causes, viz:

Reasons, for which they may be taken and used. 1821, 85, § 1.

*First.* When the deponent is so aged, infirm or sick, as not to be able to attend the court, or at other place of trial;

*Second.* When the defendant resides out of, or is absent from the state;

*Third.* When the deponent shall be bound to sea on a voyage, or is about to go out of the state by sea or land, before the expiration of the court, where the deposition is to be used, and not expected to return in season to attend the trial;

*Fourth.* When the deponent lives more than thirty miles, from the place of trial;

*Fifth.* When the deponent is confined in prison, and such imprisonment shall be continued, until after trial of the cause.

**SECT. 5.** On application of either party to a justice of the peace, or notary public, for the purpose of procuring the deposition of a witness, such justice or notary may issue a summons to the deponent, to appear before him at a designated place and time to give his deposition; and also issue notice to the adverse party, to be present at such time and place, if he should see fit; or such notice to the adverse party may be made returnable before any other justice of the peace or notary, who shall be named in such notice, as the person who is to take the deposition.

Summons to the deponent, and citation to the adverse party. 1821, 85, § 2, 4.

**SECT. 6.** The notification to the adverse party shall be served upon him or his attorney, by reading the same in his presence and hearing, or by giving to him, or leaving at his last and usual place of abode, an attested copy thereof; and the service may be made by a sworn officer, or by any other person, and proved by his affidavit.

Service of such citation. 1821, 85, § 2.

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Who is to be considered attorney of the adverse party. 1821, 85, § 2.

Notice to one of the adverse party, sufficient. 1821, 85, § 2. Time of notice. 1821, 85, § 2. 8 Greenl. 325. 16 Maine, 41.

Verbal notice, by the justice or notary. 1821, 85, § 2.

Form of citation to the adverse party. 1821, 85, § 2. 15 Mass. 492.

Form of summons to deponent. 1821, 85, § 4.

Witness may be compelled to give his deposition. 1821, 85, § 4.

SECT. 7. No person shall, for the purposes of this chapter, be considered the attorney of another, unless he has indorsed the writ or indorsed his name on the summons left with the defendant, appeared for his principal in the cause, or given notice in writing that he is attorney of such adverse party.

SECT. 8. Where there are several plaintiffs or defendants, notice may be given, by the said justice or notary, to one or more of them and that shall be deemed sufficient.

SECT. 9. No written notice, as aforesaid, shall be valid, unless the adverse party be allowed between the service of the notice, and the time appointed for taking the deposition, time for him to travel from his usual place of abode to the place of trial, not less than at the rate of one day for every twenty miles' travel, exclusive of Lord's days.

SECT. 10. Any justice of the peace or notary may give verbal notice to the adverse party, and that shall be deemed sufficient.

SECT. 11. The notice to the adverse party, if in the state, shall be in substance as follows :

"\_\_\_\_\_, ss. To \_\_\_\_\_, of \_\_\_\_\_, in the county of \_\_\_\_\_,

Greeting.

Whereas A. B. of \_\_\_\_\_, has requested, that the deposition of C. D. of \_\_\_\_\_, may be taken to be used in an action of \_\_\_\_\_, pending between you and the said A. B., and the \_\_\_\_\_ of \_\_\_\_\_, in \_\_\_\_\_, and the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ of the clock in \_\_\_\_\_-noon, are the time and place appointed, for said deponent to testify what he knows relating to said action ; you are hereby notified that you may be present, and put such questions, as you may think fit. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

\_\_\_\_\_, Justice of the Peace."

SECT. 12. The justice of the peace or notary public shall, when requested, also issue a summons to the deponent, in substance as follows, viz :

"\_\_\_\_\_, ss. To C. D. of \_\_\_\_\_, in the county of \_\_\_\_\_,

Greeting.

Whereas A. B. of \_\_\_\_\_, in the county of \_\_\_\_\_, has requested me to take your deposition, to be used in an action, now pending between him and E. F. of \_\_\_\_\_, in the county of \_\_\_\_\_, and the \_\_\_\_\_ of \_\_\_\_\_, in the town of \_\_\_\_\_, and the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ of the clock in the \_\_\_\_\_-noon, are the time and place, appointed for taking the same deposition, you are therefore required in the name of the state of Maine, then and there to appear to testify what you know, relating to said action. Dated this \_\_\_\_\_ of \_\_\_\_\_ in the year \_\_\_\_\_.

\_\_\_\_\_, Justice of the peace."

which summons may be served, and the service thereof proved, as described in the case of said notification.

SECT. 13. Any witness may be compelled to attend and give his deposition, in like manner, and under the same penalties, as he may be summoned and compelled to attend, as a witness in court, without regard to the distance of his place of abode from the place of trial ; but not to travel more than thirty miles for the purpose of giving his deposition ; and such deposition shall not be used in

y trial, excepting for the causes mentioned in the fourth section, less the adverse party shall use the witness at such trial.

**SECT. 14.** When any deposition shall be taken, out of the state, and not under a commission, the adverse party or his attorney shall be duly notified to attend.

How depositions may be taken, out of the state. 1821, 85, § 6. Deponent to be sworn, before examination. 1821, 85, § 3.

**SECT. 15.** The deponent shall be first sworn to testify the truth, the whole truth, and nothing but the truth, relating to the cause or matter for which the deposition is to be taken; and he shall then be examined, first by the party producing him, on verbal or written interrogatories, and then by the adverse party, and by the justice, the parties afterwards, if they see cause.

**SECT. 16.** The deposition shall be written by the justice or notary, or by the deponent or by some disinterested person in the presence and under the direction of such justice or notary; and before the same has been carefully read to, or by the deponent, shall be subscribed by him.

Who may write the deposition. 1821, 85, § 3.

**SECT. 17.** The justice or notary shall then make out a certificate, and annex the same to the deposition, therein stating the following facts;

Form of caption. 1821, 85, § 3.

*First.* That the deponent was sworn according to law, and subscribed;

*Second.* By whom the deposition was written;

*Third.* If it was written by the deponent or some disinterested person, he must name him, and that he wrote it in the presence and under the direction of the justice or notary;

*Fourth.* Whether the adverse party was notified to attend;

*Fifth.* Whether he attended or not;

*Sixth.* The cause in which the deposition is to be used, and the names of the parties thereto;

*Seventh.* The court or tribunal, in which it is to be tried;

*Eighth.* The place and time of trial;

*Ninth.* The cause of taking the deposition.

**SECT. 18.** The deposition shall be delivered by the justice to the court or referees, before whom the cause is to be tried, or be closed and sealed up by him, and directed to such court or referees, and be kept sealed, till opened by their order.

Deposition to be delivered in court, or sealed up. 1821, 85, § 3.

**SECT. 19.** When a deposition has been so taken, it shall not be used on trial of the cause, if the adverse party shall then make it appear, that the cause for taking such deposition no longer exists, or that the deponent is within thirty miles of the place of trial and is unable to attend the trial in person.

Not to be used, if the reason for taking it no longer exists. 1821, 85, § 5.

**SECT. 20.** Objections to the competency of a deponent, or the propriety of any questions proposed to him, or answers given by him, may be made when the deposition is produced, in the same manner, as if the witness were personally examined on the trial; and when any deposition is taken on written interrogatories, all objections to any interrogatory shall be made before it is answered; and, if the interrogatory be not withdrawn, the objection shall be made thereon; or otherwise the objection shall not afterwards be allowed.

Objections to competency of witness, or to questions proposed, when to be made.

**SECT. 21.** When a plaintiff shall become nonsuit, or discontinue his suit, and shall commence another action for the same cause, and

When depositions may be used in a second suit.

**CHAP. 133.** between the same parties or their representatives, all depositions lawfully taken for the first suit, of the taking of which the adverse party had due notice, may be used in the second suit; provided they have been duly filed in the court where the first cause was pending, and have remained on file from the time the first suit was discontinued, until the commencement of the second.

When depositions may be used, taken out of the state.  
1821, 85, § 6.  
3 Pick. 14.

Commissions to take depositions, out of the state.  
1821, 85, § 7.  
18 Pick. 53, 355.  
22 Pick. 309.

Witnesses may be compelled to give depositions, in cases of contested elections.  
1825, 310.

Application for taking a deposition in perpetuum.  
4 Greenl. 483.  
3 Pick. 14, 74.

Notice to persons interested.  
1821, 85, § 8.  
4 Greenl. 88.

Deposition, how taken, and certificate thereon.  
1821, 85, § 8.  
16 Maine, 255.

To be recorded.  
1821, 85, § 8.

When it may be used in evidence.  
1821, 85, § 8.  
1823, 211.  
11 Mass. 229.  
16 Mass. 393.  
4 Greenl. 88.

**SECT. 22.** Depositions, taken out of the state, by a justice of the peace or notary public, or other person lawfully empowered to take depositions, may be admitted or rejected by the court, at their discretion.

**SECT. 23.** The justices of the supreme judicial court, and of the district court, may issue commissions to take depositions, without the state, to be used in pending suits in the state, on such terms and conditions as they may from time to time prescribe.

**SECT. 24.** In case of the contested election of a person returned as a member of the house of representatives, either party may summon any witness before a justice to give his deposition, and he shall be subject to like penalties and liabilities, in case of disobedience, as are mentioned in the thirteenth section of this chapter.

**SECT. 25.** When any person wishes to perpetuate the testimony of any witness, he shall make a statement in writing, under oath, briefly setting forth, in substance, his title, interest or claim in, or to the subject, to which the desired testimony relates, and the names of all persons, who are supposed interested therein, and also the name of each witness proposed to be examined; and shall deliver the statement to any judge or register of probate, notary public, or clerk of the supreme judicial court or justice of the peace and quorum, requesting the person selected to take the deposition of such witness.

**SECT. 26.** The person, so selected for the purpose, shall cause notice to be given of the time and place of taking such deposition to all the persons, named in the statement, as interested; which may be given and proved in like manner, as in case of taking depositions in pending actions.

**SECT. 27.** The deponent shall be sworn and examined, and the deposition be written, read and subscribed in the same manner, as depositions taken to be used in pending actions; and the person taking such deposition, shall annex to it a certificate, under his hand, at the time of taking it; and, that it was taken in perpetual remembrance of the thing; and shall insert therein the name of the person, at whose request it was taken, and of all those who were notified to attend and did attend.

**SECT. 28.** The said statement, deposition and certificate shall, within ninety days after taking the same, be recorded in the registry of deeds in the county, where the land or any part of it lies, if the deposition relates to real estate; and if not, then in the county where the parties or some of them reside.

**SECT. 29.** All depositions taken to perpetuate the testimony of witnesses, being recorded as mentioned in the preceding section, or a copy thereof, attested by the register of deeds, may be used in the trial of any cause, whether pending at the time the deposition was taken, or commenced afterwards, between the person at whose

quest it was taken, and either of the persons named in the statement, and duly notified, or those claiming under either, concerning the title, claim or interest, set forth in the statement; subject to the same objections, as if it had been originally taken for the suit.

**SECT. 30.** Depositions to perpetuate the testimony of witnesses, being out of the state, may be taken in any other state, or in any foreign country upon a commission to be issued by the supreme judicial court or district court, in the manner hereinafter provided.

Such depositions may be taken, out of the state.

**SECT. 31.** The person, desirous to procure such depositions, may apply to either of said courts, and file a statement of the kind described in the twenty fifth section of this chapter; and, if the object of the deposition relates to real estate in this state, such statement shall be filed in the county or counties, where the same lies; and, if not, then in the county, where some of the parties reside.

Application to the court, for a commission therefor.

**SECT. 32.** The court shall order notice to be served on each of the persons named in said statement, and living in the state, fourteen days before the time appointed for hearing the parties.

Notice to persons interested.

**SECT. 33.** The court, on hearing the parties, or the applicant, if no adverse party appears, may issue a commission, if they see cause, for taking such deposition, in like manner as in a cause pending.

Court may issue a commission.

**SECT. 34.** The deposition shall be taken upon interrogatories, asked by the applicant, and cross interrogatories, by any party adversely interested, substantially in the same manner, as when taken to be used in pending causes.

Deposition to be taken upon interrogatories.

**SECT. 35.** Or the person wishing to take the deposition may file his statement in the clerk's office in vacation, and cause notice to be given to the persons named therein as interested, fourteen days at least before the next term of the court, at which time the parties may be heard.

Application may be filed in vacation, and notice given.

**SECT. 36.** Whenever any judge or register of probate, notary public, or clerk of the supreme judicial court, or any justice of the peace and of the quorum, shall have summoned any person to appear before him, to give his deposition to be used in any cause, pending in any court, in this or in any other state, or to give his deposition, to perpetuate the testimony of any witness, and such summons shall have been served and returned by a sheriff, deputy sheriff or constable, or in the manner prescribed in the sixth and seventh sections of this chapter, and proof of such service is entered on such summons, and legal fees shall have been tendered to such witness, a reasonable time before the day appointed for taking his deposition, and such witness shall refuse to attend, such judge, register, notary, clerk or justice, may adjourn the time of taking such deposition to a future hour or day, as may be convenient, and issue a *capias*, directed to a proper officer, to apprehend such witness and bring him before such judge, register, notary, clerk or justice, at the time and place to which such adjournment was ordered.

Proceedings, to compel a deponent to appear, to give his deposition.  
1833, 85, § 1.

**SECT. 37.** If such witness, being so brought before such judge, register, notary public, clerk or justice, shall refuse to depose and answer such questions, as may be propounded to him by either of

Punishment, if he refuse to depose.  
1833, 85, § 2.



**CHAP. 133.** the parties or persons interested, under the direction of the person taking the deposition, he may commit such witness to the prison of the county, for a contempt, in like manner, as the supreme judicial court or district court might commit any witness, refusing to testify in open court.

Certain deponents may affirm.  
1821, 85, § 9.

**SECT. 38.** Any person, conscientiously scrupulous of taking an oath, when lawfully required, may make his affirmation under the pains and penalties of perjury; and the same shall be deemed to have the same force and effect, as his oath would have, on the same occasion.

If a false deposition be given, it is to be deemed perjury.  
1821, 85, § 10.

**SECT. 39.** Any person, wilfully, falsely, and corruptly swearing or affirming, in giving or making any deposition or affidavit required in this chapter, shall incur the same penalties, as if the testimony had been given in open court, and wilful perjury committed in giving the same.

Witnesses may be summoned into another state to testify in criminal cases.  
1839, 382.

**SECT. 40.** When a clerk of a judicial court, in any other state, shall certify, officially in writing, that there is pending in such court a criminal cause, and that a person in this state is supposed to be a material witness, in the cause for the state, or the accused, any justice of the peace, when applied to, shall, on the back of such certificate, issue a summons, requiring such witness to appear and testify at such court, and, if any such person, so summoned, and having tendered to him a sum equal to twenty cents per mile, from the abode of the witness to the court, and two dollars at the end of every day for his attendance, and having no reasonable excuse, shall neglect so to appear and testify as aforesaid, he shall forfeit and pay three hundred dollars to him, who shall sue for the same in this state, in an action of debt; but no such witness shall be bound to go more than five hundred miles, for such purpose.

Mortgagee to disclose the amount due on the mortgage, to an attaching creditor of the mortgagor.  
1834, 126, § 1.

**SECT. 41.** Whenever a creditor has, or shall have attached, on mesne process, the right in equity which the defendant has, or shall have, of redeeming any real estate mortgaged, and shall have recovered judgment and execution against such debtor, and is desirous of having such right sold on execution according to law, he may demand of the mortgagee, or person claiming under him, a disclosure, in writing under his hand, of the sum then due and secured by such mortgage, together with the condition of such mortgage.

Same subject.  
1834, 126, § 1.

**SECT. 42.** It shall be the duty of such mortgagee, or person claiming under him, within twenty four hours of such demand, to furnish such statement to the creditor, and be liable for all damages occasioned by a neglect so to furnish the same.

May be compelled to give his deposition.  
1824, 126, § 2, 3.

**SECT. 43.** The creditor may, after the expiration of said twenty four hours, if such disclosure is not furnished as aforesaid, apply to such judge, register, notary, clerk or justice of the peace and quorum of the county, in which such mortgagee, or person claiming under him, resides; and such magistrate shall, thereupon, proceed to take the deposition of such person, in relation to the facts required to be given to him by the statement aforesaid, for perpetuating the testimony of such person, and the knowledge of the facts testified; and such judge, register, clerk, notary or justice, may make use of all such power, to compel a disclosure of the facts demanded in such statement, as is mentioned in the thirty seventh section of this chapter.

**SECT. 44.** No person shall be deemed an incompetent witness, **CHAP. 133.**  
 by reason of having committed any crime, unless he has been con- Who are com-  
 victed thereof in this state; but the conviction of any person, in petent witnes-  
 any court without the state, of a crime, of which, if he had been ses.  
 convicted in this state, it would render him an incompetent witness,  
 may be given in evidence to affect his credibility.

**SECT. 45.** The records and proceedings of any court of another How records of  
 state, or of the United States, shall be admissible in evidence in all courts of other  
 cases in this state, when authenticated by the attestation of the states are to be  
 clerk, prothonotary or other officer, having charge of the record of authenticated.  
 such court, with the seal of such court annexed. 4 Greenl. 124.

**SECT. 46.** The printed copies of all statutes, acts and resolves Printed copies  
 of this state, whether of a public or private nature, which shall be of Maine stat-  
 published under the authority of the government, shall be admitted utes, when  
 as sufficient evidence thereof, in all courts, and on all occasions proof.  
 whatever. 1821, 59, § 33.

**SECT. 47.** The printed copies of statutes of any other of the Printed copies  
 United States, or of the territories thereof, if purporting to be pub- of statutes of  
 lished under authority of the respective governments, or if commonly other states,  
 admitted and read as evidence in their courts, shall be admitted in how far evi-  
 all our courts of law, and on all occasions, as prima facie evidence dence.  
 of such laws.

**SECT. 48.** The unwritten law of any other of the United Unwritten law  
 States or of the territories thereof, may be proved as facts by parol of other states,  
 evidence, and the books of reports of cases, adjudged in their how proved.  
 courts, may also be admitted in evidence of such law.

**SECT. 49.** The existence and tenor or effect of all foreign laws Laws of foreign  
 may be proved, as facts, by parol evidence; but, if it shall appear, countries, how  
 that the law in question is contained in a written statute or code, proved.  
 the court may, in their discretion, reject any evidence of such law, 14 Mass. 455.  
 that is not accompanied by a copy thereof.

**SECT. 50.** No person shall be obliged to attend as a witness, Fees to be ten-  
 unless the fees are paid or tendered to him, which are allowed by dered to wit-  
 law for one day's attendance, and travel to and from the place of nesses.  
 attendance. 1821, 59, § 38.

**SECT. 51.** Any person, obliged to attend, who shall fail so to Penalty for non  
 attend, without reasonable cause, shall be liable to payment of all attendance.  
 damages thereby occasioned to the aggrieved party; and such fail- 1821, 59, § 38.  
 ure shall be considered a contempt of court; and may be punished  
 as such, by a fine not exceeding twenty dollars.

**SECT. 52.** The usual mode of administering oaths now in prac- Manner of ad-  
 tice, with the ceremony of holding up the hand, shall be observed; ministering  
 unless the court or magistrate shall be satisfied, that such person has oaths.  
 any peculiar mode of swearing, which he may deem more solemn. 1821, 59, § 29.

**SECT. 53.** Every person, believing in any other than the chris- Same subject.  
 tian religion, may be sworn according to the peculiar ceremonies of 1821, 59, § 29.  
 his religion.

**SECT. 54.** No person, convicted by any court of law in this Persons con-  
 state, of any infamous crime, and sentenced according to law upon victed of cer-  
 any such conviction, shall be admitted as a competent witness in tain crimes, in-  
 the trial of any civil or criminal cause, unless his competency shall competent wit-  
 have been restored by a pardon. nesses.

## CHAP. 134.

## CHAPTER 134.

## OF COMMISSIONERS TO TAKE ACKNOWLEDGMENT OF DEEDS OR OTHER CONTRACTS, AND DEPOSITIONS IN OTHER STATES.

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| <p>SECT. 1. Appointment. Power to authenticate deeds.</p> <p>2. Legal effect of their official acts and certificates.</p> | <p>SECT. 3. May administer oaths, and take depositions.</p> <p>4. Qualification. Seal.</p> |
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Appointment.  
Power to authenticate  
deeds.  
1837, 290, § 1.

SECTION 1. The governor shall have power to appoint one or more commissioners in any other of the United States, who shall continue in office during the pleasure of the governor; and shall have authority to take the acknowledgment and proof of the execution of any deed or other conveyance or lease of any lands, lying in this state; and of any contract, letter of attorney or any other writing, under seal or not, to be used or recorded in this state.

Legal effect of  
their official  
acts and certificates.  
1837, 290, § 1.

SECT. 2. Such acknowledgment or proof, so taken according to the laws of this state, and certified by any such commissioner, under his seal of office, annexed to, or indorsed on such instrument, shall have the same force and effect, as if the same had been made before a judge or justice of the peace, or other officer, authorized to perform such acts in this state.

May administer  
oaths, and  
take depositions.  
1837, 290, § 2.

SECT. 3. Every commissioner, appointed as before mentioned, shall have power to administer an oath, which may be lawfully required in this state, to any person willing to take it; and to take and duly certify all depositions to be used in any of the courts of this state, in conformity to the laws thereof, either on interrogatories proposed under commission from a court of this state, or by consent of parties, or on legal notice given to the opposite party; and all such acts shall be as valid, as if done and certified according to law by a magistrate in this state.

Qualification.  
Seal.  
1837, 290, § 3.

SECT. 4. Every such commissioner, before performing any duty, or exercising any power in virtue of his appointment, shall take and subscribe an oath or affirmation before a judge or clerk of one of the superior courts of the state in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of the laws of Maine; which oath and a description of his seal of office, shall be filed in the office of the secretary of this state.

## CHAPTER 135.

## OF THE SELECTION AND SERVICE OF JURORS.

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| <p>SECT. 1. Board for preparing lists of jurors. Towns may make alterations.</p> <p>2. Lists, how prepared.</p> <p>3. Persons exempted from serving.</p> <p>4. Tickets of names to be kept in jury box; liable to be drawn once in three years.</p> | <p>SECT. 5. Number required to be kept in the jury box.</p> <p>6. Names may be withdrawn in certain cases.</p> <p>7. Commissioners to divide the county into jury districts.</p> <p>8. How divided, and numbered.</p> |
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- 9. Copy of division to be furnished to the clerk.
- 10, 11. Rule, by which the clerk shall issue venire.
- 12. Grand jurors in the district court to serve one year.
- 13. When venires shall issue for such.
- 14. Distribution of venires. Notice of meetings to draw jurors.
- 15, 16. Mode of drawing jurors.
- 17. Date of draft to be indorsed on tickets.
- 18. Constable to notify jurors.
- 19. Return of venire.
- 20. Indorsement to be transferred, if ticket be renewed.

- 21. Penalty for neglect of selectmen or clerk.
- 22. Penalty for neglect of constable.
- 23. Penalty for neglect of town.
- 24. Penalty for neglect of clerk of court, or sheriff.
- 25, 26. Penalty for neglect of juror to attend.
- 27. Penalty for fraud by town clerk or selectmen.
- 28, 29. Recovery, and appropriation of fines.
- 30. When no traverse jurors are to be summoned to the supreme judicial court.

**SECTION 1.** The selectmen of each town, together with the treasurer and clerk of each town, shall constitute a board for preparing lists of jurors to be laid before such town for their approval; and the said town shall have power, by a majority of the legal votes in legal town meeting assembled, to make alterations in such lists, by striking out such names therefrom, as they may think proper to erase; but shall not be allowed to insert any other names therein.

Board for preparing lists of jurors. Towns may make alterations. 1821, 84, § 1. 1834, 136, § 1.

**SECT. 2.** Such board shall, once, at least, in every three years, prepare a list of such persons, under the age of seventy years, in the town, as they shall judge best qualified to serve as jurors; being persons of good moral character, and qualified as the constitution directs, to vote in the choice of representatives.

Lists, how prepared. 1821, 84, § 1.

**SECT. 3.** The following persons shall be exempted from serving as jurors, and their names shall not be placed on the said lists, to-wit: the governor, counselors, judges and clerks of the common law courts, secretary and treasurer of the state, all officers of the United States, judges and registers of probate, registers of deeds, titled ministers of the gospel, officers of any colleges, preceptors of incorporated academies, physicians and surgeons regularly authorized, cashiers of incorporated banks, sheriffs and their deputies, notaries, counselors and attorneys at law, county commissioners, justices and constant ferrymen.

Persons exempted from serving. 1821, 84, § 1.

**SECT. 4.** The said board, after the list of jurors shall have been approved by the town, as mentioned in the first section, having their names upon tickets, shall place them in the jury box; and the same shall be held and kept by the town clerk; and the names, whose names shall be contained in the box, shall be liable to be drawn and serve on any jury, at any court for which they may be drawn, once in every three years, except as provided in the next section, and not oftener.

Tickets of names to be kept in jury box; liable to be drawn once in three years. 1821, 84, § 1. 16 Mass. 220. 8 Pick. 504.

**SECT. 5.** It shall be the duty of each town to provide and have constantly kept in the box, ready to be drawn when required, the names of a number of jurors, not less than one, and not more than two for every hundred persons in such town, according to the last census, taken next before preparing the box.

Number required to be kept in the jury box. 1821, 84, § 2. 1823, 214, § 2.

**SECT. 6.** If any person, whose name shall be in the box, shall be convicted of any scandalous crime, or be guilty of any gross immorality, his name shall be withdrawn from the box by the board.

Names may be withdrawn in certain cases. 1821, 84, § 3.

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Commissioners to divide the county into jury districts. 1821, 84, § 4.

How divided, and numbered. 1821, 84, § 4.

Copy of division to be furnished to the clerk. 1821, 84, § 4.

Rule, by which the clerk shall issue venires. 1821, 84, § 4.

Same subject.

Grand jurors in the district court to serve one year. 1821, 84, § 5.

When venires shall issue for such. 1821, 84, § 5.

Distribution of venires. Notice of meetings to draw jurors. 1821, 84, § 5.

Mode of drawing jurors. 1821, 84, § 6.

SECT. 7. The county commissioners in each county, within one year after every new census, and as much oftener, as a considerable change of population shall render it useful and expedient, shall divide such county into not less than four, nor more than twelve districts.

SECT. 8. Each district shall contain so many adjoining towns, as shall make the number of inhabitants in each division as near equal, according to the last census for the time being, as may be without dividing a town; and such districts shall be designated numerically.

SECT. 9. The commissioners shall cause a copy of such division to be delivered to the clerk of the courts in such county, as soon as may be after the division is made.

SECT. 10. The clerk of the courts, in such county, shall issue venires in due form, directed to the constables of as many towns in one jury district, and for as many jurors as shall be, as near as may be, in proportion to the number of jurors, sent for in the other districts in the county, to serve at the same court; always collecting the grand and traverse jurors, so far as shall be practical and convenient, as uniformly from all parts of the county, as the situation of towns, number of their inhabitants, and a practical rotation and equalization of the service of jurors will permit.

SECT. 11. No more than two grand jurors and two traverse jurors shall be taken from the same town, to serve at the same court; unless from necessity, some extraordinary occasion, or to equalize their services upon the principles before mentioned.

SECT. 12. The grand jurors, who shall be returned to serve at the district court, shall serve at every term of said court, throughout the year.

SECT. 13. Venires for such jurors shall be issued, forty days at least, before the second Monday of September annually.

SECT. 14. The sheriff of each county, as soon as he receives venires for jurors, shall immediately send them to the constables of the respective towns, to which they are directed; and, on receipt of such venires, each constable shall notify the freeholders and other inhabitants of the town, qualified to vote in the election of representatives, in the manner annual town meetings are notified, and especially the selectmen and town clerk, unless a different mode has been agreed upon at a legal town meeting, which any town is hereby authorized to do, in respect to town meetings for the drawing of jurors only, to assemble and be present at the draft and selection of the jurors called for; which meeting shall be six days before the sitting of the court, to which the venire is made returnable.

SECT. 15. At such meeting, the town clerk, or, in his absence, one of the selectmen, shall carry into the meeting the jury box, containing the names of the persons approved as aforesaid; the box shall be unlocked in the meeting, and the tickets mixed by the major part of the selectmen present; and one of the selectmen shall draw out as many tickets, as there shall be jurors required; and the persons, whose names are thus drawn, shall be returned as jurors, unless from sickness, absence beyond sea, without the limits,

r in different parts of the state, they shall be considered by the own, as unable to attend the court for which they are drafted, and served on a jury within three years from that day. CHAP. 135.

**SECT. 16.** In either of the above cases, or in case a person is drawn, who may have been appointed to an office, which exempts him from serving as a juror, others shall be drawn in their stead; but any person, being thus excused, or who shall be returned, and shall not attend court, or shall, when appearing there, be excused, shall not be excused on another draft, should it happen within the term of three years, notwithstanding the minute made on his ticket; and, whenever it shall happen, that all those persons, whose names are in the box of any town, shall have served on the jury within three years, or for reasons above mentioned shall not be liable to serve, the selectmen shall draw out of the box such number of men as may be required, provided they have not served as jurors within eighteen months; and, in such case, the clerk shall certify on the venire that all persons, whose names are contained in the jury box, have served upon the jury within three years, or that they are not able to be returned.

Same subject.  
1823, 214, § 1.

**SECT. 17.** When a juror has been drawn, and not excused by the town, the selectmen, who drew his ticket, shall indorse thereon the date of the draft, and return the same into the box.

Date of draft to be indorsed on tickets.  
1821, 84, § 7.  
14 Pick. 196.

**SECT. 18.** The constable shall notify the persons, thus drawn to serve as jurors, four days at least before the sitting of the court, at which they are to attend, by reading the venire and indorsement thereon to them, or leaving, at their usual place of abode, a written notification of their having been drawn, and also of the time and place of the sitting of the court, where they are to attend.

Constable to notify jurors.  
1821, 84, § 7.

**SECT. 19.** He shall make a seasonable return of the venire with his doings thereon.

Return of venire.  
1821, 84, § 7.  
5 Greenl. 333.

**SECT. 20.** Whenever there is a renewal or exchange of any of the tickets in the box, for others of the same persons, the selectmen shall transfer from the back of the old tickets, to the new ones, the minutes of such drafts, as had been made within the three preceding years.

Indorsement to be transferred, if ticket be renewed.  
1821, 84, § 7.

**SECT. 21.** If the selectmen or town clerk of any town shall neglect to perform the duties, required of them or him in this chapter, so that the jurors called for from the town to which they belong shall not be returned, such selectmen and town clerk shall be fined not less than ten, nor more than fifty dollars, each.

Penalty for neglect of selectmen or clerk.  
1821, 84, § 20.  
1823, 214, § 2.

**SECT. 22.** Any constable shall be fined a sum not exceeding twenty dollars, for neglecting the performance of the duties required of him in this chapter.

Penalty for neglect of constable.  
1821, 84, § 20.

**SECT. 23.** Any town, which shall neglect to perform the duties required of it, shall be fined a sum, not exceeding one hundred dollars.

Penalty for neglect of town.  
1821, 84, § 20.

**SECT. 24.** If the clerk of the court, or sheriff of the county, shall neglect to perform the duties required of them, respectively, so as to prevent a compliance with any of the provisions of this chapter, he shall be fined a sum not exceeding fifty dollars.

Penalty for neglect of clerk of court, or sheriff.  
1821, 84, § 20.

**SECT. 25.** Any juror, not being an inhabitant of Portland, who after being notified and returned, shall unnecessarily fail in his

Penalty for neglect of jurors to attend.  
1821, 84, § 20.

**CHAP. 135.** attendance, shall be fined as for contempt, not exceeding twenty dollars.

Same subject.  
1821, 84, § 20.

**SECT. 26.** Any juror, who is an inhabitant of Portland, who shall so fail of attendance at court, shall be fined not exceeding forty dollars, as for contempt; the fines in this and the preceding section, to be divided among the jurors, who shall attend and serve.

Penalty for fraud by town clerk or selectmen.  
1821, 84, § 20.

**SECT. 27.** Any town clerk or selectman, who shall be guilty of any fraud in practising on the box previous to the draft, or in drawing a juror, or in returning the name of a juror into the box which had been fairly drawn, and drawing another in his stead, or in any other mode, shall be fined not exceeding two hundred dollars.

Recovery, and appropriation of fines.  
1821, 84, § 20.

**SECT. 28.** All fines, imposed by the twenty first, twenty second, twenty third and twenty fourth sections, shall be for the use of the county, in which the offender dwelt, at the time of the neglect; and be recovered by indictment, information or action by the treasurer of the county, to be commenced within twelve months after commission of the offence.

Same subject.  
1821, 84, § 20.

**SECT. 29.** All fines imposed by the twenty seventh section, shall be recovered on indictment, one moiety to the use of the state, and the other to the prosecutor thereof.

When no traverse jurors are to be summoned, to the supreme judicial court.  
1836, 196, § 2.

**SECT. 30.** In each county, in which two terms of the supreme judicial court are annually holden, no traverse jurors shall be summoned to attend at the full or law term, unless the court shall otherwise order.

## CHAPTER 136.

### OF THE PREVENTION OF FRAUDS AND PERJURIES IN CONTRACTS, AND IN ACTIONS FOUNDED THEREON.

- SECT. 1.** Cases, in which promises must be in writing.
2. Consideration need not be expressed therein.
3. Representation of another's ability or character, to be in writing.
4. What contracts for sale of goods, must be in writing.
5. When specific performance of a contract may be enforced by bill in equity.

**SECT. 6.** Proceedings thereon.

7. What decree shall be made.
8. Conveyance to be good.
- 9, 10. Enforcement of such decrees.
11. Provision, in case of the death of the obligee before conveyance.
12. Administrator of the contractor may petition for authority to make the conveyance.

Cases, in which promises must be in writing.  
1821, 53, § 1.

**SECTION 1.** No action, shall be brought and maintained in any of the following cases:

*First.* To charge an executor or administrator, upon any special promise to answer damages out of his own estate;

12 Mass. 297.  
7 Greenl. 356.

*Secondly.* To charge any person, upon any special promise to answer for the debt, default or misdoings of another;

*Thirdly.* To charge any person, upon an agreement made in consideration of marriage;

5 Mass. 133.  
11 Mass. 342, 533.  
3 Greenl. 340.

*Fourthly.* Upon any contract for the sale of lands, tenements or hereditaments, or of any interest in or concerning them;

9 Greenl. 62. 3 Fairf. 506. 15 Mass. 14, 61, 201. 1 Pick. 43, 328. 16 Pick. 27. 17 Pick. 538. 20 Pick. 124.

**Fifthly.** Upon any agreement, that is not to be performed within one year from the making thereof: **CHAP. 136.**

Unless the promise, contract or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and be signed by the party to be charged therewith, or by some person thereunto lawfully authorized.

4 Greenl. 1, 258.  
1 Fairf. 31.  
18 Pick. 569.  
22 Pick. 97.

**SECT. 2.** The consideration of any such promise, contract or agreement need not be set forth, or expressed, in the writing signed by the party to be charged therewith, but may be proved by any other legal evidence.

Consideration need not be expressed therein.  
7 Mass. 233.  
17 Mass. 122.  
4 Greenl. 180, 387.

**SECT. 3.** No action shall be brought and maintained, to charge any person upon, or by reason of, any representation or assurance, made concerning the character, conduct, credit, ability, trade or dealings of any other person, unless such representation or assurance shall be made in writing, and signed by the party to be charged thereby, or by some person, thereunto by him lawfully authorized.

Representation of another's ability or character to be in writing.

**SECT. 4.** No contract for the sale of any goods, wares or merchandise, for the price of thirty dollars or more, shall be allowed to be good, unless the purchaser shall accept part of the goods, so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or some note or memorandum, in writing, of the said bargain be made and signed by the party to be charged by such contract, or by his agent, thereunto by him lawfully authorized.

What contracts for sale of goods must be in writing.  
1821, 53, § 3.  
11 Mass. 6.  
13 Mass. 87.  
9 Greenl. 79.  
1 Fairf. 374.  
21 Pick. 205, 384.

**SECT. 5.** When any person, who is bound by a contract in writing to convey any real estate, shall die before making the conveyance, the other party may have a bill in equity in the supreme judicial court, to enforce a specific performance of the contract by the heirs, devisees, or by the executor or administrator of the deceased party, such bill to be filed within one year after the grant of administration.

When specific performance of a contract may be enforced by bill in equity.  
1821, 52, § 13.  
1826, 347, § 2.

**SECT. 6.** The court shall hear and decide every such case, according to the proceedings in chancery, and shall make such decree therein, as justice and equity may require.

Proceedings thereon.  
1821, 52, § 13.

**SECT. 7.** If it shall appear that the plaintiff is entitled to have a deed of conveyance, the court may authorize and require the executor or administrator of the deceased party to convey the estate in like manner as the deceased person might and ought to have done, if living; and, if his heirs or devisees, or any of them, are within the state, and competent to act, the court may direct them or any of them, instead of the executor or administrator, to convey the estate in the manner before mentioned, or to join with the executor or administrator in such conveyance.

What decree shall be made.  
1821, 52, § 13.

**SECT. 8.** Every conveyance, made in pursuance of such decree, shall be effectual to pass the estate contracted for, as fully as if made by the contractor himself.

Conveyance to be good.  
1821, 52, § 13.

**SECT. 9.** If the defendant in such suit shall neglect or refuse to make a conveyance according to the decree, the court may enter judgment, that the plaintiff shall recover judgment for possession of the land contracted for, to hold according to the terms of the intended conveyance, and may issue a writ of seizin thereupon, in the form used in a real action; and the plaintiff, by force of said

Enforcement of such decree.



**CHAP. 136.** writ, having obtained possession of the premises, shall hold the same in like manner, as if conveyed in pursuance of the decree.

Same subject. **SECT. 10.** The preceding section shall not prevent the court from enforcing their decree, by any other proper process, according to chancery proceedings.

Provisions, in case of the death of the obligee before conveyance. **SECT. 11.** If the person, to whom the conveyance was to be made, shall die before such suit is brought, or before the conveyance is completed, any person, who would be entitled to the estate under him as heir, devisee or otherwise, in case the conveyance had been made according to the contract, may commence such suit, or prosecute it, if commenced; and the conveyance shall thereupon be made, as to vest the estate in the same persons, who would have been so entitled to it.

Administrator of the contractor may petition for authority to make the conveyance. **SECT. 12.** If the party, to whom any such conveyance was to be made, or those claiming under him, shall not commence a suit, as before provided, and if the heirs of the deceased party are under age, or otherwise incompetent to convey the lands contracted for, the executor or administrator of the deceased may file a bill in equity in the supreme judicial court, setting forth the contract and the circumstances of the case, whereupon the court may, by their decree, authorize and require such executor or administrator to convey the estate, in the manner, the deceased should have done: and such a conveyance shall be deemed a performance of the contract on the part of the deceased, and sufficient to entitle his heirs, executors or administrators, to demand a performance thereof on his part.

**CHAPTER 137.**

OF RECOGNIZANCES FOR DEBTS.

- SECT. 1.** Who may enter into recognizance.
- 2.** Form thereof.
- 3.** Justice may deliver it to the creditor after recording it.
- 4.** May be filed and recorded with clerk of the courts.
- 5.** Clerk may issue execution thereon.
- 6.** Officers to serve such executions.
- 7.** Clerk may renew them.
- 8.** When not to run against the lands or body of the debtor.

- SECT. 9.** Administrator of conusee may sue out execution.
- 10.** If conusor die, scire facias may issue against his administrator.
- 11.** After three years, writ of scire facias or action of debt will lie.
- 12.** Consequence, if one of several conusors or conusees die.
- 13.** Remedy, if execution be wrongfully issued.

Who may enter into recognizance.

**SECTION 1.** Any person, capable of binding himself by a common bond, may enter into a recognizance for the payment of a debt, as hereinafter mentioned; and may thereby subject his person, or his goods and estate, to be taken in execution for such debt.

Form thereof. 1821, 77, § 1.

**SECT. 2.** Such recognizance may be taken before any justice of the peace, and shall be in substance, as follows:

"I, A. B., of \_\_\_\_\_, in the county of \_\_\_\_\_, do owe unto C. D., of \_\_\_\_\_, in the county of \_\_\_\_\_, the sum of \_\_\_\_\_ to be paid to the said C. D. on the \_\_\_\_\_ day of \_\_\_\_\_; and, if

shall fail of the payment of said debt, at the time aforesaid, I will and grant, that the said debt shall be levied of my goods and chattels, lands and tenements, and in want thereof upon my body.

CHAP. 187.

In testimony whereof, I have hereto set my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_."

SECT. 3. After such recognizance shall have been signed and sealed, and acknowledged before said justice, and his certificate thereof signed by him, the same shall then be delivered to such creditor or conusee; and the justice shall keep a record of all recognizances, taken by him.

Justice may deliver it to the creditor, after recording it. 1821, 77, § 2.

SECT. 4. Should the debt not be paid at the time appointed, and the conusee be desirous to have a writ of execution on the recognizance, he may deliver the same to the clerk of the district court of the county, in which the same was taken; and such clerk shall record the same in a book, kept for that purpose, and place the original on the files of the court.

May be filed, and recorded, with clerk of the courts.

SECT. 5. The clerk of the court may thereupon, without any order of court, at any time within three years after such debt became due, issue an execution on such recognizance in the name of the state, varying the established form of execution, so far only, as necessary, and adding to the principal sum due, interest thereon, from the time it became due, and also any interest, secured by the recognizance before its maturity.

Clerk may issue execution thereon.

SECT. 6. All proper officers shall be bound to execute the same, and shall be answerable for their neglect, in like manner, as in case of execution issued on a judgment.

Officers to serve such executions. 1821, 77, § 2.

SECT. 7. The clerk may renew such execution from time to time, as executions on judgments may be renewed; and all such executions may be directed to the proper officers of any county, and be there executed.

Clerk may renew them. 1821, 77, § 2.

SECT. 8. But, if the sum, originally due on such recognizance, did not exceed the sum of twenty dollars, then the clerk shall not issue the execution against the lands of the conusor; and, if the sum be less than ten dollars, the clerk shall not issue execution against the body.

When not to run against the lands or body of the debtor.

SECT. 9. If the conusee die before the debt shall be fully paid, his executor or administrator may sue out execution in the same manner, as the conusee might, had he been living, without suing out a scire facias, and the execution shall be varied accordingly.

Administrator of conusee may sue out execution.

SECT. 10. If the conusor die before the debt shall be fully paid, no execution shall issue of course; but the conusee may have a writ of scire facias, or an action of debt, to recover the same as in case of a judgment.

If conusor die, scire facias may issue against his administrator.

SECT. 11. After the expiration of said three years, from the time set for payment in the recognizance, the conusee may have a writ of scire facias, or action of debt, against the party liable, as in case of a judgment.

After three years, writ of scire facias or debt will lie. 1821, 77, § 3. 13 Mass. 493. 1 Greenl. 158.

SECT. 12. When there are several conusors or conusees, and one or more of them shall die before the debt is paid, the rights of the surviving conusees, and the obligations of the surviving conusors, shall be the same, as in case of a judgment.

Consequence, if one of several conusors or conusees die.

SECT. 13. Any person, injured by the suing out or service of

Remedy, if ex-

**CHAP. 137.** any such execution, shall have his remedy, by writ of audita querela, or otherwise, as in case the execution had been sued out upon a judgment.

Execution be wrongfully issued.

## CHAPTER 138.

### OF REFERENCE OF DISPUTES, BY CONSENT, BEFORE A JUSTICE OF THE PEACE.

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| <p><b>SECT. 1.</b> What controversies may be submitted.</p> <p><b>2.</b> Manner and form of submission.</p> <p><b>3.</b> Submission of all demands.</p> <p><b>4.</b> Submission of a specific demand.</p> <p><b>5.</b> No revocation, but by consent.</p> <p><b>6.</b> Parties may agree upon the time of reporting.</p> <p><b>7.</b> Report, how returned into court.</p> <p><b>8.</b> Power of referees.</p> | <p><b>SECT. 9.</b> Proceedings of court thereon. Recommitment.</p> <p><b>10.</b> All the referees must hear, but a majority may decide.</p> <p><b>11.</b> Costs. Compensation of referees.</p> <p><b>12.</b> Report may be made to any court, by consent.</p> <p><b>13.</b> Judgment may be reversed, on writ of error, or exceptions.</p> <p><b>14.</b> A referee may take acknowledgment or administer oaths.</p> |
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What controversies may be submitted.

1821, 78, § 1.

8 Mass. 1.

5 Greenl. 38.

Manner and form of submission.

1821, 78, § 1.

1824, 262, § 1.

4 Mass. 242,

448.

13 Maine, 41.

20 Pick. 480.

**SECTION 1.** All controversies, which may be the subject of a personal action, may be submitted to one or more referees, in the manner provided in this chapter.

**SECT. 2.** The parties may appear, personally or by attorney, before any justice of the peace, and there sign and acknowledge an agreement, in substance, as follows :

“ Know all men by these presents, that \_\_\_\_\_ of \_\_\_\_\_, in the county of \_\_\_\_\_, and \_\_\_\_\_ of \_\_\_\_\_, in the county of \_\_\_\_\_, have agreed to submit the demand, made by the said \_\_\_\_\_, against the said \_\_\_\_\_, which is hereunto annexed,” (and “ all other demands between the parties,” as the case may be,) “ to the determination of \_\_\_\_\_; the report of whom, (or the major part of whom,) being made within one year from this day, to the district court for the said county of \_\_\_\_\_, the judgment thereon shall be final. And, if either of the parties shall neglect to appear before the referees, after proper notice given to them, of the time and place appointed by the referees for hearing the parties, the referees may proceed in his absence.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.”

The foregoing agreement, having been subscribed by the parties, shall be acknowledged by them or their attorneys, as their voluntary act, before the said justice, or any other justice.

**SECT. 3.** If all demands between the parties are submitted to the decision of the referees, no specific demand need be annexed to the agreement.

**SECT. 4.** If a specific demand only is submitted, the same shall be annexed to the agreement, and signed by the party making it; and such demands shall be stated in such a manner as to be readily understood, and be as certain, in substance, as the case will admit.

Submission of all demands.  
5 Mass. 334.

Submission of a specific demand.

1821, 78, § 1.

3 Mass. 324,

398.

14 Mass. 43.

9 Greenl. 15.

**SECT. 5.** Neither party shall have power to revoke the submission, without the consent of the other. **CHAP. 138.**

No revocation, but by consent. Parties may agree upon the time of reporting.

**SECT. 6.** When the parties are so disposed, they may agree on the time when the report shall be made; and, in this particular, vary from the form, stated in the second section, without being confined to one year.

**SECT. 7.** The report of the referees shall be delivered by one of the referees to the court, to which it is to be returned, according to the agreement; or it shall be sealed up and transmitted to such court, and remain sealed till opened by the clerk.

Report, how returned into court. 1821, 78, § 2.

**SECT. 8.** The referees, agreed upon according to the provisions of this chapter, shall have the same authority, as those appointed by a rule of said court.

Power of referees. 1821, 78, § 4.

**SECT. 9.** The court, to which the report shall be made, may accept, reject or recommit the same for further consideration; and the referees shall give notice to the parties of the time and place of new hearing; and, when the report is accepted, judgment shall be entered thereon, and execution be issued, as in cases of submission by rule of court.

Proceedings of court thereon. Recommitment. 1821, 78, § 2. 6 Mass. 70. 14 Mass. 252. 6 Greenl. 21. 8 Greenl. 288.

**SECT. 10.** All the referees must meet and hear the parties, but a majority may make the report, which shall be as valid, as though agreed by all of them; provided, that it appear on the face of the report, or by the certificate of the dissenting referee, that all of them attended and heard the parties.

All the referees must hear, but a majority may decide. 5 Mass. 496. 1 Greenl. 64.

**SECT. 11.** The referees may allow such costs as they may judge reasonable, or none to either party, unless some special provision be made in the submission upon the subject; but the court may reduce the compensation of the referees, if it should appear reasonable so to do.

Costs. Compensation of referees.

**SECT. 12.** The report may be made to any court held within the time limited in the submission, provided, that the parties or their attorneys shall sign an agreement to that effect, naming the court, which agreement shall be annexed by the referees to their report.

Report may be made to any court, by consent. 8 Greenl. 165.

**SECT. 13.** Either party may bring a writ of error to reverse the said judgment, or file exceptions to any decision of the district court, accepting or rejecting a report, and carry the same to the supreme judicial court, as is provided in sections, eighteen, nineteen and twenty, in chapter, ninety seven; and, on a hearing of the same, the court shall give such judgment as the district court ought to have rendered.

Judgment may be reversed on writ of error, or exceptions. 2 Pick. 25, 570, 625.

**SECT. 14.** Any one of the referees, being a justice of the peace, may take the acknowledgement of the parties to the submission; and any referee may swear witnesses in the cause.

A referee may take acknowledgment, or administer oaths. 1824, 252, § 1.

CHAPTER 139.

OF TIMBER AND CORD WOOD, AND HOW IT MAY BE DISPOSED OF, IN CERTAIN SPECIFIED CASES.

- SECT. 1. On application of the owners of certain interests in wood land, the supreme judicial court, after notice and hearing, may grant leave to sell the wood.
- SECT. 2. Commissioners to be appointed therefor, and to give bond.
- 3. Proceeds, how invested. Appropriation of income.
- 4. Court to appoint trustees of such proceeds, who shall give bond.

On application of the owners of certain interests in wood land, the supreme judicial court, after notice and hearing, may grant leave to sell the wood. 1821, 34, § 1.

SECTION 1. Any person, seized of a freehold estate, or of a remainder or reversion, in fee simple or fee tail, in a lot or tract of wood land, or timber land, on which the trees are of an age and growth, fit to be cut, may apply to the supreme judicial court in any county, for leave to fell and sell such trees, and invest the proceeds of the sale for the use of the persons interested in such wood land; and such court, after due notice, given to all interested therein, and a hearing of the parties, if any appear, may appoint one or more persons to examine the land, and make a report of their examination to the court; and, thereupon, the court, if they think proper, may license and order, on such terms and condition, as they shall impose, the whole or a part of such trees to be felled and sold, and the proceeds of the sale to be brought into court, subject to its further orders.

Commissioners to be appointed therefor, and to give bond. 1821, 34, § 2.

SECT. 2. The court shall appoint one or more commissioners, who shall superintend the felling of said trees, and the sale of them, and account to the court for the proceeds; and, who shall also give bond to the clerk of the court, or such other person as they shall appoint, for the faithful performance of the trust.

Proceeds, how invested. Appropriation of income. 1821, 34, § 2.

SECT. 3. The court may cause the net proceeds of the sale, after deducting necessary expenses, to be invested in other real estate in this state or in public stocks at their discretion, to be held to the same uses, and subject to the same limitation, as the land; and the income or profits thereof to be paid to the persons, entitled to the income and profits of the land, or apportioned among the several persons interested in the estate, as the court shall deem just and equitable.

Court to appoint trustees of such proceeds, who shall give bond. 1821, 34, § 2.

SECT. 4. The court may appoint one or more trustees to take and hold such estate or stocks for the said uses; who shall give bond, with sufficient sureties, to said clerk, or other person as aforesaid, for the faithful discharge of their duty; and they shall be removable by said court at pleasure.

CHAPTER 140.

OF HABEAS CORPUS.

- SECT. 1. Who may prosecute the writ, as matter of right.
- SECT. 2. Who are not so entitled, as of right.

- SECT. 3.** Application, how made, by persons not entitled, of right.
4. Where to be made returnable.
  5. Form of application.
  6. When the writ shall not issue.
  7. Proceedings, if excessive bail be demanded.
  8. If the officer refuse a copy of the precept, the writ shall issue forthwith.
  9. Form of writ, in cases mentioned in the second section.
  10. Time of service and return. Tender of fees.
  11. Officer to bring the person restrained, when he makes return.
  12. Proceedings, if the person be sick, and cannot be brought.
  13. Examination of the causes of restraint.
  14. Persons interested to be notified, before discharge.
  - 15, 16, 17. Proceedings, and decision upon the application.
  18. Form of writ, if the restraint be not by an officer.
  19. By whom it may be issued.
  20. Where served.
  21. Person restraining, how designated, if unknown.
  22. Person detained, how designated, if unknown.
  23. Form of return, in the cases mentioned in the 10th and 18th sections.

- SECT. 24.** How authenticated.
25. Manner of keeping the party, before judgment.
  26. Penalty, for neglect of an officer to give a copy of his precept for detaining a prisoner.
  27. Punishment, if an officer neglect to serve a writ of habeas corpus.
  28. If attachment issue against a sheriff, how served.
  29. Proceedings, in such case, for release of the person, for whose benefit the writ issued.
  30. Person discharged, on habeas corpus, not to be arrested again, except in certain cases.
  31. Conveyance to prison of persons ordered to be committed. Penalty, for eluding the service of a writ of habeas corpus.
  32. Penalties, no bar to actions for damages.
  33. In certain cases, a third person may appear for the party detained.
  34. Supreme court, or any justice thereof, may allow bail at discretion. Exception.
  35. Admission of a person to bail, when committed for not finding sureties.
  36. Habeas corpus may issue, to bring in a prisoner, as a witness.
  37. Minors, enlisting into the army or navy, entitled to the benefits of this chapter.

**SECTION 1.** Every person, deprived of his personal liberty by the act of another, except in the cases mentioned in the following section, shall be entitled to, and have a right to prosecute a writ of habeas corpus, according to the provisions of this chapter, to obtain relief, if unlawfully confined.

Who may prosecute the writ, as matter of right. 1821, 64, § 1.

**SECT. 2.** The following persons shall not, of right, be entitled to demand and prosecute such writ:

Who are not so entitled, as of right. 1821, 64, § 1. 2 Pick. 172, 445. 8 Pick. 138. 10 Pick. 434.

*First.* Persons committed to and confined in prison for treason or felony, or suspicion thereof, or as accessories, before the fact, to a felony, when the same is plainly and specially expressed in the warrant of commitment;

*Second.* Persons convicted, or in execution upon legal process, criminal or civil;

*Third.* Persons committed on mesne process in any civil action, on which they are liable to be arrested and imprisoned.

**SECT. 3.** Every application from a person, described in the preceding section, for such writ, shall be made to the supreme judicial court, if in session in the county where the applicant is confined; and, if not, then to any justice of such court; and, when issued by the court, it shall be made returnable thereto; but if, at the time of such return, the court shall have been adjourned without day, or for more than seven days, it may be returned before any justice of said court, and be heard and determined by him.

Application how made, by persons, not entitled, of right. 1821, 64, § 1.

**CHAP. 140.**

Where to be made returnable. 1821, 64, § 2.  
Form of application. 1821, 64, § 1.

**SECT. 4.** When issued by a justice of said court, it may be made returnable before said court, or before himself or any other justice of the court.

**SECT. 5.** The application shall be in writing, signed by the applicant, and under oath. He shall state therein the place, where he is imprisoned or confined, and by whom he is deprived of his liberty; and shall produce, to the said court or justice, a copy of the precept by virtue of which he is restrained of his liberty, under the attestation of the officer, holding the precept.

When the writ shall not issue.

**SECT. 6.** If, on inspection of the copy of such precept, it shall appear to such court or justice, that such applicant is lawfully imprisoned, or restrained of his liberty by virtue thereof, a writ of habeas corpus shall not be granted.

Proceedings, if excessive bail be demanded. 1821, 64, § 5.

**SECT. 7.** If, by the copy of such precept, it shall appear that the applicant is committed and imprisoned on mesne process for want of bail, and, if such court or justice thereof shall be of opinion, that excessive bail is demanded, such court or justice shall decide what bail is reasonable, and he shall, on giving such bail to the plaintiff, be discharged.

If the officer refuse a copy of the precept, the writ shall issue forthwith. 1821, 64, § 6.

**SECT. 8.** If the prison keeper or other officer having the custody of the applicant, shall refuse or unreasonably delay to deliver to such applicant an attested copy of the precept, by which he restrains him, on demand thereof being made, such court, or justice thereof, on proof of such demand and refusal, shall forthwith issue the writ of habeas corpus, as prayed for.

Form of writ in cases mentioned in the second section. 1821, 64, § 2.

**SECT. 9.** When such writ is issued by the supreme judicial court, on the application of any person described in the second section of this chapter, it shall be substantially as follows; that is to say:

“STATE OF MAINE.

C \_\_\_\_\_, ss. To A. B. of \_\_\_\_\_;

[L. s.]

Greeting.

We command you, that the body of C. D., in our prison, at \_\_\_\_\_, under your custody,” (or “by you imprisoned and restrained of his liberty,” as the case may be), “as it is said, together with the day and cause of his taking and detaining, by whatsoever name the said C. D. shall be called or charged, you have before our supreme judicial court, holden at \_\_\_\_\_, in and for our county of \_\_\_\_\_, immediately after the receipt of this writ, to do and receive what our said court shall then and there consider concerning him in this behalf: and have you there this writ.

Witness \_\_\_\_\_, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

\_\_\_\_\_, clerk.”

The like form shall be used by any justice of said court, changing what should be changed, when such writ shall be awarded by him.

Time of service and return. Tender of fees. 1821, 64, § 3.

**SECT. 10.** When such writ shall be offered to the officer to whom it is directed, he shall receive the same; and, on payment or tender of such sum as said court, or justice thereof, shall direct, shall make due return thereof, within three days after receiving it, if the place of return be within twenty miles of imprisonment; and, if it is more than twenty miles, and less than one hundred

miles, he shall return it within seven days; and, if more than one hundred miles, he shall return it within fourteen days; provided, that if the writ was issued against such officer, on his refusal or neglect to deliver on demand to the applicant a copy of the precept, by which he restrained such applicant of his liberty, then the officer shall be bound to obey the writ without payment or tender of expenses, as above mentioned in this section.

**SECT. 11.** The person making the return shall, at the same time, bring the body of the party, if in his custody or power, or under his restraint, according to the command of the writ, unless prevented by the sickness or infirmity of the party.

**SECT. 12.** When, by reason of sickness or infirmity of the party, he cannot, without danger, be brought to the place appointed in the writ, that fact shall be stated in the return, and, if proved to the satisfaction of the court or justice thereof to be true, any justice of the court may proceed to the place where the party is confined, and there make his examination, or may adjourn the same to another time, or make such other order in the case, as law and justice may require.

**SECT. 13.** On the return of the writ, the said court, or justice thereof, shall, without delay, proceed to examine the causes of imprisonment or restraint; but may adjourn such examination, from time to time, as circumstances may require.

**SECT. 14.** When it appears, that the party is detained on any process, under which any other person has an interest in continuing such imprisonment or restraint, the party shall not be discharged, until notice has been given to such other person, or his attorney, if within the state, or within thirty miles of the place of examination, to appear and object if he see cause; and, if imprisoned on any criminal accusation, he shall not be discharged, until sufficient notice shall have been given to the attorney general or other attorney for the state, that he may appear and object, if he should think fit.

**SECT. 15.** The party, imprisoned or restrained, may deny any of the facts, stated in the return or statement, and may allege any other facts, that are material; and the court, or justice thereof, may, in a summary way, examine the cause of imprisonment or restraint, and hear evidence, produced by any person interested, both in support of such imprisonment or restraint, and against it; and thereupon may dispose of the party, as law and justice shall require.

**SECT. 16.** If no legal cause be shown for the imprisonment or restraint of the party, the court or justice thereof shall discharge him; but this section shall not be construed, as applying to the case of a person, committed on mesne process, where excessive bail is demanded, as mentioned in the seventh section of this chapter.

**SECT. 17.** If the party is imprisoned and detained for any offence, which is bailable, he shall be admitted to bail, if sufficient bail be offered; and, if not, he shall be remanded with an order of the said court or justice thereof, expressing the sum in which he shall be held to bail, and the court at which he shall be bound to appear; and any justice of the peace may, at any time before the sitting of the court, bail the party pursuant to such order.

CHAP. 140.

Officer to bring the person restrained, when he makes return.  
1821, 64, § 3.

Proceedings, if the person be sick, and cannot be brought.

Examination of the causes of restraint.  
1821, 64, § 8.

Persons interested, to be notified, before discharge.

Proceedings, and decision upon the application.  
1821, 64, § 8.

Same subject.  
1821, 64, § 1.

Same subject.  
1821, 64, § 5.



CHAP. 140.

Form of the writ, if the restraint be not by an officer.

SECT. 18. In cases of imprisonment or restraint of personal liberty by any person, not a sheriff, deputy sheriff, coroner, constable or jailer, or marshal, deputy marshal or other officer of the courts of the United States, the writ shall be in the following form, viz :

“STATE OF MAINE.

(Seal.) To the sheriffs of our several counties, and their respective deputies, Greeting.

We command you, that the body of C. D. of \_\_\_\_\_, imprisoned and restrained of his liberty, as it is said, by A. B. of \_\_\_\_\_, you take and have before our supreme judicial court, holden at \_\_\_\_\_, immediately after receipt of this writ, to do and receive what our court shall then and there consider concerning him in this behalf; and summon the said A. B. then and there to appear before our said court, to show cause of the taking and detaining of the said C. D., and have you there this writ with your doings thereon. Witness our \_\_\_\_\_ at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, Clerk.”



By whom it may be issued.

SECT. 19. Such writ may be issued by the supreme judicial court, or district court, when sitting in any county, in which the applicant for the writ shall be restrained, or by any justice of either of said courts, and the above form of the writ shall be changed so far as is necessary, when issued by the district court, or any justice of either of said courts.

Where served.

SECT. 20. The writ may be served in any county of the state.

Person restraining, how designated if unknown.

SECT. 21. The person, having custody of the prisoner, may be designated by the name of his office, if he have any, or by his own name; or, if both are unknown or uncertain, he may be described by an assumed name; and any one who is served with the writ, shall be deemed the person thereby intended.

Person detained, how designated, if unknown.

SECT. 22. The person detained, and to be produced, shall be designated by his name, if known; and, if unknown or uncertain, he may be described in any other way, so as to make known, who is intended.

Form of return, in the cases mentioned in the 10th and 13th sections.

SECT. 23. In cases, provided for in the tenth section of this chapter, the person who makes the return, and, in the cases provided for in the eighteenth section thereof, the person, in whose custody the prisoner shall be found, shall state in writing to the court, or justice thereof, before whom the process is to be returned, plainly and unequivocally :

First. Whether he has, or has not, the party in his custody or power, or under restraint ;

Second. If he has, he shall state, at large, the authority and the true and whole cause of such imprisonment or restraint, upon which the party is detained ; and,

Third. If he has had the party in his custody or power, or under his restraint, and has transferred such custody or restraint to another, he shall state particularly to whom, at what time, for what cause, and by what authority, such transfer was made.

How authenticated.

SECT. 24. Such return or statement shall be signed by the person making it, and sworn to by him, unless he is a sworn public officer, and makes his return in his official capacity.

**SECT. 25.** Until judgment be given by the court or justice thereof, the party may be bailed to appear from day to day, or be remanded, or committed to the sheriff of the county, or placed in such custody, as the case may require.

**SECT. 26.** If any officer shall refuse or neglect, for four hours, to deliver a true and attested copy of the warrant or precept or process, by which he detains any prisoner, to any person, who shall demand such copy, and tender the fees therefor, he shall forfeit and pay to such prisoner, two hundred dollars.

**SECT. 27.** If any person or officer, to whom such writ of habeas corpus shall be directed, shall refuse to receive the same, or shall neglect to obey and execute the same as required in this chapter, and no sufficient cause shall be shown for such refusal or neglect, he shall forfeit to the aggrieved party, four hundred dollars; and the court or judge, before whom the writ was returnable, shall proceed forthwith by attachment, as for a contempt, to compel obedience to the writ, and to punish the person guilty of the contempt.

**SECT. 28.** If such an attachment be issued against a sheriff or his deputy, it may be directed to a coroner or any other person, designated therein, who shall have power to execute the same; and, if the sheriff or his deputy should be committed on such process, he may be committed to the jail in any county, other than his own.

**SECT. 29.** Upon the refusal of the person, to whom the writ is directed, to obey and execute the same, the court or judge may also issue a precept to any officer, or other person therein named, commanding him to bring forth the person, for whose benefit the writ was issued, before such court or judge; and the prisoner shall hereupon be discharged, bailed or remanded, in like manner, as if he had been brought in upon the writ of habeas corpus.

**SECT. 30.** No person, who has been enlarged by a habeas corpus writ, shall again be imprisoned or restrained of his liberty for the same cause, unless he shall be indicted therefor, or convicted hereof, or committed for want of bail, or unless, after a discharge or defect of proof or some material defect in the commitment, in a criminal case, he shall be arrested on sufficient proof, and committed by legal process for the same offence.

**SECT. 31.** Any person, ordered to be committed to prison on any criminal charge, shall be carried to such prison, as soon as may be, and shall not be delivered from one officer to another, except in easy and speedy conveyance; nor removed, without his consent, from one county to another, unless by habeas corpus; and, if any one, who has in his custody, or under his power, any person entitled to a writ of habeas corpus, whether issued or not, shall transfer such person to the custody of another, or change his place of confinement, with intent to elude the service of such writ, he shall forfeit and pay to the party aggrieved, the sum of four hundred dollars.

**SECT. 32.** No penalty, established by this chapter, shall bar any action at common law for damages, for false imprisonment.

**SECT. 33.** When any person shall be unlawfully carried out of the state, or imprisoned in a secret place, any other person may

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Manner of keeping the party, before judgment.

Penalty, for neglect of an officer, to give a copy of his precept for detaining a prisoner.

1821, 64, § 6.  
Punishment, if an officer neglect to serve a writ of habeas corpus.  
1821, 64, § 9, 10.

If attachment issue against a sheriff, how served.

Proceedings, in such case, for release of the person, for whose benefit the writ issued.

Person discharged, on habeas corpus, not to be arrested again, except in certain cases.  
1821, 64, § 12.

Conveyance to prison of persons ordered to be committed. Penalty, for eluding the service of a writ of habeas corpus.  
1821, 64, § 11.

Penalties, no bar to actions for damages.  
1821, 64, § 13.

In certain cases, a third person may appear

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for the party detained. 1821, 64, § 12. Supreme court, or any justice thereof, may allow bail, at discretion. Exception. 1821, 64, § 1.

Admission of a person to bail, when committed for not finding sureties. 1821, 68.

Habeas corpus may issue, to bring in a prisoner, for trial, or as a witness.

Minors, enlisting into the army and navy, entitled to the benefits of this chapter. 1821, 64, § 7.

appear for him in any action, brought therefor in his name, w<sup>h</sup> shall stipulate for the payment of costs, as the court shall order.

**SECT. 34.** Nothing in this chapter shall be construed to restr~~ict~~ the supreme judicial court in term time, or any justice thereof, from bailing any person whatever, or for whatever off~~ence~~ committed, at their discretion, whenever the circumstances of ~~the~~ case may require it; excepting persons committed by the govern~~or~~ and council, senate or house of representatives, and for the ~~causes~~ mentioned in the constitution.

**SECT. 35.** When any person is confined in jail for a bailable offence, or for not finding sureties on a recognizance, any justice of the district court, or two justices of the peace and of the quorum, on application made to them, may inquire into the case, and admit any such person to bail, and exercise the same power concurrently, which any one of the justices of the supreme judicial court may or can do; and may issue a writ of habeas corpus, and cause such person to be brought before them, for the purpose expressed in this section, and may take such recognizance.

**SECT. 36.** Any court may issue a writ of habeas corpus, when necessary, to bring before them any prisoner for trial in any case pending in any such court, or to testify as a witness, in a case therein pending, when his personal attendance may be deemed necessary for the attainment of justice.

**SECT. 37.** If any minor, under the age of twenty one year, shall be enlisted within this state into the army or navy of the United States, without the consent in writing of his parent, guardian or master, he shall be entitled to all the benefits of this chapter, on the application of such minor or of his parent, guardian or master, to the district court.

**CHAPTER 141.**

OF THE WRIT OF AUDITA QUERELA.

**SECT. 1.** Form of the writ.

2. In what court and county to be sued out.

3. Proceedings in court.

**SECT. 4.** Special damages.

5. Pleadings. Filing exceptions.

6. Proceedings, if plaintiff be in prison.

7. Effect of a surrender to jail.

Form of the writ. 1821, 65, § 1, 2, 4.

10 Mass. 101. In what court and county to be sued out. 1821, 65, § 1.

Proceedings in court. 1821, 65, § 3.

**SECTION 1.** The writ of audita querela may be sued out in the form of a writ of attachment or summons; and shall be sealed, signed, tested and indorsed, as other writs.

**SECT. 2.** When brought to prevent, set aside or annul proceedings, had on a judgment or writ of execution, it shall be sued out of the same court, in which judgment was rendered; but, in all other cases, it shall be sued in the county and court having jurisdiction of the cause, according to the provisions of law, as to personal actions.

**SECT. 3.** If the defendant, after having been duly served with process, shall not appear, he shall be defaulted; and, if he appear, a trial shall be had, as in common civil actions.

- SECT. 4.** The complainant, in his writ, may also set forth and declare for any special damages, he may have suffered, by means of the service of such execution ; and, on proof of such damages, he shall have judgment and execution for the same, in like manner, as he should recover them in a subsequent suit, and instead of such mode.
- SECT. 5.** The defendant may plead the general issue, of not guilty, with or without a brief statement, as the case may require, and plead any special matter in bar : and exceptions may be alleged on the rulings, instructions and opinion of the court, as prescribed in the case of civil actions, unless by law an appeal is allowable.
- SECT. 6.** When the plaintiff is in prison, by virtue of such execution, the court, before which such action is brought, may admit him to bail, to be approved by the court ; and the bond shall be conditioned, that, if final judgment be rendered for the defendant, the complainant shall, within thirty days after such judgment, surrender himself to the jail keeper to be detained on the execution, or, in his stead, at that time, satisfy the same execution, and also such final judgment, as shall be rendered for the respondent.
- SECT. 7.** If the plaintiff shall surrender himself to jail, he shall remain in lawful custody on such execution, and there detained until discharged according to law.
- CHAP. 141.**  
Special damages. 1821, 65, § 6.  
Pleadings. Filing exceptions. 1821, 65, § 7, 8.  
Proceedings, if plaintiff be in prison. 1821, 65, § 9.  
Effect of a surrender to jail. 1821, 65, § 9.

**CHAPTER 142.**

**OF THE WRIT FOR REPLEVING A PERSON.**

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| <p><b>SECT. 1.</b> Who is entitled to the writ.</p> <p><b>2.</b> From what court to issue. Service.</p> <p><b>3.</b> Form of the writ.</p> <p><b>4.</b> Bond to be given.</p> <p><b>5.</b> Officer responsible for the sureties.</p> <p><b>6.</b> What judgment, if action be maintained.</p> <p><b>7.</b> What judgment, if not maintained.</p> <p><b>8.</b> What judgment, if defendant be entitled to custody of the plaintiff.</p> <p><b>9.</b> If defendant have eloigned the plaintiff, he may be arrested.</p> | <p><b>SECT. 10.</b> He may give bail.</p> <p><b>11.</b> Discharge, and costs, if not guilty of eloigning.</p> <p><b>12.</b> If guilty, to be imprisoned.</p> <p><b>13.</b> Form of writs of reprisal.</p> <p><b>14.</b> Discharge of defendant, on proof of plaintiff's death.</p> <p><b>15, 16.</b> Proceedings, if plaintiff be produced.</p> <p><b>17.</b> Appeal, and proceedings.</p> <p><b>18.</b> A third person may sue out the writ.</p> |
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- SECTION 1.** If any person is imprisoned, restrained of his liberty, or held in duress, unless by force of a lawful writ, warrant or other process, civil or criminal, issued by a court of competent authority, he shall be entitled as of right, to the writ for replevying the person, and to be thereby delivered in the manner herein provided.
- SECT. 2.** The writ shall be issued from, and returnable to the district court in the county in which the plaintiff is confined ; and it shall be directed to the sheriff, or coroner, of such county, as the court may require, and shall be served as soon as may be, and four days before the return day.
- SECT. 3.** The writ shall be in the form heretofore established,
- Who is entitled to the writ. 1821, 66, § 1.  
From what court to issue. Service. 1821, 66, § 2. 11 Mass. 271.  
Form of the writ.

**CHAP. 142.** except that the proviso shall be as follows: "provided that the said  
1821, 66, § 2. A. B." (the plaintiff,) "shall, before his deliverance, give bond to the defendant, in such sum as you shall judge reasonable, and with two sufficient sureties, with condition to appear at said court to prosecute his replevin against the defendant, and to have his body there to be redelivered, if thereto ordered by the court, and to pay all such damages and costs, as may be awarded against him; and, if the plaintiff is delivered by you, at a day before the sitting of said court, you are to summon the defendant to appear at said court."

Bond to be given.  
1821, 66, § 2.

Officer responsible for the sureties.  
1821, 66, § 2.

What judgment, if action be maintained.

What judgment, if not maintained.  
1821, 66, § 3.

What judgment, if defendant be entitled to custody of the plaintiff.  
13 Maine, 408.

If defendant have eloigned the plaintiff, he may be arrested.  
1821, 66, § 4.

He may give bail.  
1821, 66, § 4.

Discharge, and costs, if not guilty of eloigning.  
1821, 66, § 4.

If guilty, to be imprisoned.  
1821, 66, § 4.

Form of writs of reprisal.  
1821, 66, § 4.

Discharge of defendant, on proof of plaintiff's death.  
1821, 66, § 4.

**SECT. 4.** No person shall so be delivered by such writ, until a bond shall be given, as prescribed in the preceding section; and the bond shall be returned to the court with the writ.

**SECT. 5.** The officer, serving the writ, shall be answerable for the sufficiency of the sureties in like manner, as he is answerable for taking insufficient bail in a civil action.

**SECT. 6.** If the plaintiff shall maintain his action, by proving the alleged unlawful imprisonment or restraint, he shall be discharged, and recover his costs.

**SECT. 7.** If he shall not maintain his action, the defendant shall recover his costs and such damages as the jury may assess, or the court, if the parties consent, or in case of a default.

**SECT. 8.** If it shall appear, that the defendant is bail for the plaintiff, or that, as his child, ward, apprentice or otherwise, he is entitled to the custody of the plaintiff, he shall have judgment for a redelivery of the body of the plaintiff, to be held or disposed of, according to law.

**SECT. 9.** If it shall appear, that the defendant has eloigned the plaintiff's body, so that the officer cannot deliver him, the court shall, on motion in behalf of the plaintiff, issue a writ of reprisal to take the body of the defendant, and him safely keep, so that he may be at the then next term of the court, to traverse the return of the said writ for the replevying the plaintiff.

**SECT. 10.** The defendant may be enlarged, by giving bail in such sum as the officer shall require, with two sufficient sureties, for his appearance at court.

**SECT. 11.** At such court, the defendant may traverse the return on the writ for replevying the plaintiff; and, if it shall appear, that he is not guilty of eloigning the plaintiff, he shall be discharged and recover his costs.

**SECT. 12.** If such return shall not be traversed, or if, upon such traverse, it shall appear, that the defendant is guilty of eloigning the plaintiff, an alias writ of reprisal shall issue; and, thereupon, he shall be committed to the common jail, there to remain, irrepleviable, until he shall produce the body of the plaintiff, or prove his death.

**SECT. 13.** The aforesaid writs shall be substantially in the form heretofore established, and used for the same in this state.

**SECT. 14.** The defendant, after having been committed on an alias writ of reprisal, may suggest the death of the plaintiff; and the court shall empanel a jury to try the fact, at the expense of the defendant; and, if the death is proved, the defendant shall be discharged.

**SECT. 15:** If the defendant shall, at any time after the return of elongation, produce the body of the plaintiff in court, the court shall deliver the plaintiff from imprisonment, upon his giving to the defendant such bond as is before directed to be taken by the officer, when the plaintiff is delivered by him; and, for want of the bond, he shall stand committed to abide the judgment on the writ for replevying the plaintiff.

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Proceedings, if plaintiff be produced.

**SECT. 16.** When the body of the plaintiff is produced, as mentioned in the last section, the suit shall be tried in the manner before mentioned.

Same subject.

**SECT. 17.** Either party may appeal to the supreme judicial court, in like manner as in common civil actions, and, in case of an appeal from any order or judgment upon the writ of reprisal, the whole case in the original writ for replevying the plaintiff, shall be carried up to the supreme judicial court, and shall there be disposed of, as it should have been in the district court.

Appeal, and proceedings. 2 Mass. 207.

**SECT. 18.** The writ of replevin may be sued out by any person in behalf of the plaintiff, without any express power for that purpose, he giving bond, as before mentioned, when sued by the plaintiff himself.

A third person may sue out the writ. 1821, 66, § 5.

## CHAPTER 143.

### OF WRITS OF ERROR AND CERTIORARI.

- SECT. 1.** How WRITS OF ERROR may issue.
2. Execution not to stay, unless bond be given.
  3. Bond to be approved.
  4. Filing of bond, and effect thereof.
  5. Costs to prevailing party. Damages and costs, if defendant prevail.
  6. Proceedings, on writs of error.
  7. Writs of error in capital cases.

- SECT. 8.** Effect thereof, in other criminal cases.
9. Provision for keeping plaintiff in error, on stay of proceedings.
  10. Limitation of writs of error.
  11. WRITS OF CERTIORARI, how issued.
  12. Costs, on applications, or on final decisions.
  13. Limitation of applications for certiorari.

**SECTION 1.** Writs of error, in civil cases, may issue of course out of the supreme judicial court, in vacation as well as term time; and shall be returnable to the same court.

How writ of error may issue. 6 Mass. 4. 10 Mass. 163.

**SECT. 2.** No writ of error shall operate to stay or supersede execution in any civil action, unless the plaintiff in error, or some person in his behalf, shall give bond to the defendant with one or more sureties, with condition that the plaintiff shall prosecute his suit to effect, and shall pay and satisfy such judgment as shall be rendered thereon.

Execution not to stay, unless bond be given.

**SECT. 3.** The sufficiency of the sureties, and the sum for which the bond shall be given, shall be determined by any judge of the supreme judicial court, or by the clerk from whose office the writ of error is issued, according to such general rules, as the court may, from time to time, establish.

Bond to be approved.

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Filing of bond, and effect thereof.

SECT. 4. When such bond shall be given, it shall be filed in the clerk's office, for the use of the defendant; which shall be deemed a delivery of the bond; and no execution shall be thereafter issued on the judgment, complained of, during the pendency of the writ of error; and, if execution shall have been already issued, the clerk shall make out and sign a certificate of the issuing of the writ of error, and the filing of the bond; and, after notice of such certificate to the officer holding the execution, all further proceedings thereon shall be stayed.

Costs to prevailing party. Damages and costs, if defendant prevail. 14 Maine, 195. 18 Pick. 417.

SECT. 5. The prevailing party on a writ of error, in any civil action, shall, in all cases, be entitled to his costs against the adverse party; and, if the judgment is affirmed, the court shall adjudge to the defendant in error damages for his delay, not less than at the rate of six per cent., nor exceeding twelve per cent. a year, on the amount recovered by the former judgment; and, in such case, they may also, in their discretion, award double costs to the defendant.

Proceedings, on writs of error. 4 Pick. 497.

SECT. 6. The proceedings upon writs of error, as to the assignment of errors, the scire facias to the defendant, and the pleadings and judgments, and all other matters not herein provided for, shall be according to the course of common law, as modified by the practice and usage in this state, and such general rules as may be made by the supreme judicial court.

Writs of error, in capital cases.

SECT. 7. No writ of error, upon a judgment for any capital offence, shall issue, unless allowed by one of the justices of the supreme judicial court, after notice given to the attorney general or other attorney for the state.

Effect thereof, in other criminal cases.

SECT. 8. Upon all other judgments in criminal cases, writs of error shall issue of course; but they shall not stay or delay the execution of the sentence or judgment, unless they shall be allowed by a justice of the supreme judicial court, with an express order thereon, for a stay of all proceedings on such judgment or sentence.

Provision for keeping plaintiff in error, on stay of proceedings.

SECT. 9. When a stay of proceedings shall be ordered, as provided in the preceding section, the judge may, at the same time, make such order as the case may require, for the custody of the plaintiff in error, or for letting him to bail; or the party may, upon a writ of habeas corpus, procure his enlargement upon giving bail, if entitled thereto.

Limitation of writs of error.

SECT. 10. No judgment in any case shall be reversed or avoided for any error or defect, unless the writ of error thereon be sued out within six years next after the entering up of judgment, or within six years next after this chapter shall become a law; but, if any person entitled to such writ, at the time such title accrued to him, shall be within the age of twenty one years, a married woman, insane, imprisoned, or out of the limits of the United States, then such person, his heirs, executors or administrators may sue out the same, within five years after the removal of the disability aforesaid.

Writs of certiorari, how issued. 6 Mass. 72. 14 Mass. 393. 8 Greenl. 292. 2 Pick. 386. 15 Pick. 234.

SECT. 11. All writs of certiorari, to correct errors in proceedings, that are not according to the course of the common law, shall be issued from the supreme judicial court, according to the practice heretofore established, and subject to such further regulations, as shall be made from time [to time] by the supreme judicial court.

Costs, on applications, or on final decision.

SECT. 12. Upon every application for a certiorari, and also on

re final adjudication, when a certiorari is granted, the court may, in their discretion, award costs against any party, who shall appear and undertake to maintain or object to the proceeding in question.

**SECT. 13.** No such application for a writ of certiorari shall be sustained, unless made therefor within six years next after the proceeding which is complained of, or within six years after this chapter shall take effect; provided, that the saving clause in the tenth section of this chapter shall apply to this section also.

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Limitation of applications for certiorari.

## CHAPTER 144.

### OF THE ACTION OF DOWER.

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| <p><b>SECT. 1.</b> Right of a widow to sue for dower.</p> <p><b>2.</b> Previous demand. Time of bringing the action.</p> <p><b>3.</b> Demand upon a corporation, and time for commencing the action.</p> <p><b>4.</b> Pleadings in such action.</p> <p><b>5.</b> Damages for detaining dower.</p> <p><b>6.</b> Suit to be against tenant of the freehold. Liable for damages only whilst in possession.</p> | <p><b>SECT. 7.</b> Separate action for damages against the person, on whom the demand was made.</p> <p><b>8.</b> Writ of seisin, and proceedings in setting off dower.</p> <p><b>9.</b> Assignment of rents and profits in certain cases.</p> <p><b>10.</b> Recovery of dower by a woman divorced.</p> |
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**SECTION. 1.** When a woman is entitled to dower, and it is not set out to her, by the heir, or tenant of the freehold, to her satisfaction, according to the intendment of the law, nor assigned to her by the judge of probate, she may recover the same, by a writ of dower, in the manner hereinafter prescribed.

Right of a widow to sue for dower. 1821, 40, § 1.

**SECT. 2.** She must demand her dower of the person, who is seized of the freehold at the time of making the demand, if he be in this state, otherwise, of the tenant in possession, and shall not commence her action to recover the same before the expiration of one month after making such demand, nor after the expiration of one year from the same time; but this shall not preclude her making a new demand and commencing an action thereon, if an action should not be brought within one year after the first demand.

Previous demand. Time for bringing the action. 1821, 40, § 1.

**SECT. 3.** When any corporation is the tenant of the freehold, she must demand her dower in writing of any officer of such corporation, on whom by law, a writ in a civil action against the same may be served; but she shall not commence her action against such corporation before the expiration of sixty days, nor after the expiration of one year from such demand; but a second demand may be made, if necessary, as provided in the preceding section.

Demand upon a corporation, and time for commencing the action. 1839, 363, § 1.

**SECT. 4.** In an action of dower, the defendant may plead in abatement, that he is not tenant of the freehold, but not in bar of the action.

Pleadings in such action. 1839, 363, § 2.

**SECT. 5.** If the demandant recovers judgment for her dower, she shall also in the same action recover her damages for the detention thereof.

Damages for detaining dower. 1821, 40, § 2.

**SECT. 6.** The action shall be brought against the person, who

Suit to be a-



**CHAP. 144.** is tenant of the freehold at the time the suit is commenced ; but, if he is not the same person against whom demand is made, he shall be liable for damages only for the time, during which he held the possession.

gainst tenant of the freehold. Liable for damages only whilst in possession. 1 Mass. 469.

Separate action for damages against the person on whom the demand was made.

Writ of seizin, and proceedings in setting off dower. 1821, 40, § 2.

Assignment of rents and profits in certain cases. 1821, 40, § 3.

Recovery of dower by a woman divorced. 1821, 71, § 5.

**SECT. 7.** In the case mentioned in the preceding section, if the demandant shall recover her dower and damages in the writ of dower, she may afterwards maintain an action on the case, against the prior tenant of the freehold, of whom her demand was made, for the rents and profits for the time, during which he held the premises, after the making of the demand.

**SECT. 8.** When judgment for her dower is rendered in favor of the demandant, a writ of seizin shall be issued, requiring the proper officer to cause her dower to be assigned and set out to her by three disinterested persons, to be appointed by the plaintiff, defendant and officer, as in case of the levy of an execution on land ; they shall be duly sworn, to set out the same equally and impartially, and as conveniently as may be, and according to their best skill and judgment ; and the officer shall make return of the writ and doings thereon to the court, with the assignment of dower indorsed thereon, or annexed thereto ; which being accepted, shall be conclusive.

**SECT. 9.** When the estate, out of which the dower is to be assigned, consists of a mill or other tenement, which cannot be divided without damage to the whole, the dower may be assigned of the rents and profits thereof, to be had and received by the demandant, as tenant in common with the other owners of the estate.

**SECT. 10.** Any woman, who is divorced from her husband, for his fault, may recover her dower in the manner before provided, against her former husband, or whoever shall be the tenant of the freehold.

## CHAPTER 145.

### OF REAL ACTIONS.

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| <p><b>SECT. 1.</b> All writs abolished, but writs of entry.</p> <p><b>2.</b> Saving, in favor of infants, and certain others.</p> <p><b>3.</b> Recovery of estates by writ of entry. Mode of service.</p> <p><b>4, 5.</b> Allegations in the declaration.</p> <p><b>6.</b> Proof of seizin.</p> <p><b>7.</b> Right of entry must be proved.</p> <p><b>8.</b> Such right of entry not defeated by descent or discontinuance.</p> <p><b>9, 10.</b> Who may be considered a dis-seizor. Disclaimer.</p> <p><b>11.</b> Proof, to entitle the demandant to recover, on trial.</p> <p><b>12.</b> Joinder of demandants.</p> | <p><b>SECT. 13.</b> Demandant may recover, upon proof of title.</p> <p><b>14.</b> Recovery of damages by demandant.</p> <p><b>15, 16, 17.</b> Estimation of rents and profits.</p> <p><b>18.</b> Recovery of damages against other persons.</p> <p><b>19.</b> Real actions not to abate by death or intermarriage of a party. Proceedings in such case.</p> <p><b>20.</b> Appointment of guardians for minors ; amendments.</p> <p><b>21.</b> Writs of possession to conform to the case. Estoppel.</p> <p><b>22.</b> Allowance of costs, and stay of execution, in such case.</p> |
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- SECT. 23. Betterments allowed, after six years' possession.
- 24. Description of the premises demanded.
- 25. Tenant may consent, that demandant may recover a specified part. Effect thereof.
- 26. Tenant may have betterments upon demurrer or default.
- 27. Request, by tenant, for appraisal of improvements, and, by demandant, for appraisal of the land.
- 28. Demandant may elect to abandon.
- 29, 30, 31. Mode of collecting the value of the land, in such case.
- 32. Execution may be extended on the land.
- 33. Remedy, if tenant be evicted.
- 34. Consequence, if demandant do not abandon.
- 35. Restriction of the right to betterments.
- 36. Tenant not to commit waste.
- 37. Agreement of parties, as to value.

- SECT. 38. Tenant may propose a sum, at which the value may be estimated. Effect thereof.
- 39. Set off of costs, in certain cases.
- 40. Jurors disqualified, if interested in similar questions.
- 41. Execution may issue after a year.
- 42. What constitutes a possession and improvement.
- 43. Proceedings, if either party die before the cause is disposed of.
- 44. How writ of possession shall issue in such case.
- 45. Either party may have a view, by the jury.
- 46. Proceedings, if a life estate be demanded.
- 47. Remedy, if tenant be ousted, after six years' possession.
- 48. How available.
- 49. Pending actions not affected by this chapter.
- 50. Cases, in which defendant may impeach the plaintiff's title deeds.

**SECTION 1.** All writs of right and of formedon, and all writs of entry, except that which is provided for in this chapter, shall be abolished from and after the first day of April, in the year, one thousand, eight hundred and forty three, except as is provided in the following sections.

All writs abolished, but writs of entry.

**SECT. 2.** If any person, who, on the said first day of April, shall be entitled to maintain any of the said actions, which are to be abolished on that day, shall be within the age of twenty one years, a married woman, insane, imprisoned or without the limits of the United States, the action may be brought, at any time within five years, after the disability shall cease, or after the death of the person disabled; provided, that no such action shall be maintained, unless it would have been barred by the statutes of limitation in force, at the time, when this chapter shall take effect.

Saving, in favor of infants, and certain others.

**SECT. 3.** Any estate of freehold, whether in fee simple, fee tail or for life, may be recovered by a writ of entry; and such writ, and also the writ in an action of dower, shall be served, not only in the usual manner by attachment and summons, or by copy of the writ, upon the defendant, but, if the defendant be not tenant in possession, by a delivery, by the officer, to the tenant, or by leaving at his last and usual place of abode, an attested copy of the writ; and, if the defendant be not an inhabitant of this state, the service on the tenant shall be sufficient notice to the defendant, or the court may order such further notice, as they may deem proper.

Recovery of estates, by writ of entry. Mode of service. 1821, 59, § 4. 7 Greenl. 232.

**SECT. 4.** The demandant shall declare on his own seizin, within twenty years then last past, without naming any particular day, and shall allege a disseizin by the tenant; but need not aver a taking of the profits.

Allegations in the declaration.

**SECT. 5.** He shall set forth the estate he claims in the premises, whether in fee simple, fee tail or for life; and, if for the latter,

Same subject.

**CHAP. 145.** then whether for his own life or the life of another ; but shall not be required in any case to state in the writ, the origin of his title, or the deduction of it to himself ; but, on the application of the tenant, the court may direct the demandant to file in the case an informal statement of the title on which he relies, and the origin of it.

Proof of seizin.  
22 Pick. 295.

**SECT. 6.** The demandant shall not be required to prove an actual entry under his title, but proof, that he is entitled to such an estate in the premises, as he claims, as heir, devisee, purchaser, or otherwise, and also that he has a right of entry therein, shall be deemed sufficient proof of the seizin, alleged in the declaration.

Right of entry must be proved.

**SECT. 7.** No such action shall be maintained, unless, at the time of commencing the action, the demandant had such right of entry into the premises.

Such right of entry not defeated by descent or discontinuance.

**SECT. 8.** No descent, or discontinuance of any kind, or however occasioned, which may hereafter occur, shall take away or defeat any right of entry for the recovery of real estate.

Who may be considered a disseizor. Disclaimer.

**SECT. 9.** Every person alleged to be in possession of the demanded premises in such writ of entry, claiming any freehold therein, may be considered as a disseizor, for the purpose of trying the right, whatever may be the manner of his original entry on the premises ; but, by a brief statement under the general issue, the defendant may shew that he was not in possession of the premises demanded, when the action was commenced, and disclaim any right, title, or interest therein ; and proof of such fact shall defeat the action ; and, if he was in possession of, or claiming only a part of the demanded premises, when the action was commenced, he shall describe such part in a statement, signed by him or his attorney, and filed in the case, and may disclaim the residue as aforesaid ; and, if, on trial, the facts contained in such statement shall be proved to be true, the demandant shall recover judgment for no more than the part, so described therein.

Same subject.

**SECT. 10.** If the person in possession have actually ousted the demandant, or withheld the possession of the premises, he may, at the election of the demandant, be considered a disseizor for the purpose of trying the right, though he should claim therein an estate less than freehold.

Proof, to entitle the demandant to recover, on trial.

**SECT. 11.** In the trial upon such writ of entry on the general issue, if the demandant shall prove, that he is entitled to such estate in the premises as he has alleged, and had a right of entry into the same on the day when the action was commenced, he shall recover the premises, unless the tenant in possession shall prove a better title in himself.

Joinder of demandants.  
1821, 59, § 21.

**SECT. 12.** Persons claiming, as tenants in common, joint tenants or coparceners, may all join, or any two or more of them may join, in a suit for recovery of lands ; or any one may sue alone for his own particular share.

Demandant may recover, upon proof of title.

**SECT. 13.** The demandant may, in all cases, recover any specific part of the premises, or any undivided portion thereof, to which he shall prove a title, though such part or portion may be less than is demanded.

Recovery of damages by demandant.

**SECT. 14.** When a demandant recovers judgment in a writ of entry, he shall also be entitled to recover, in the same action, dam-

ges against the tenant for the rents and profits of the premises from the time when the demandant's title accrued, subject to the limitations hereinafter contained; and he shall also recover damages for any destruction or waste of the buildings or other property, or which the tenant is by law answerable.

**SECT. 15.** The rents and profits, for which the tenant shall be liable, shall be the clear annual value of the premises for the time, during which he was in possession thereof, after deducting all lawful taxes and assessments on the premises, that shall have been paid by the tenant, and all the necessary and ordinary expenses of cultivating the land, or collecting the rents, profits or income of the premises.

Estimation of rents and profits.

**SECT. 16.** In estimating the rents and profits, the value of the same by the tenant of any improvements made by himself, or those under whom he claims, shall not be computed nor allowed to the demandant.

Same subject. 12 Mass. 314.

**SECT. 17.** The tenant shall never be liable for the rents and profits, for any longer time than six years, nor for any waste or other damage committed before that time, unless the rents and profits are allowed by way of set off to his claim for improvements, as hereinafter provided.

Same subject.

**SECT. 18.** Nothing, contained in this chapter, shall prevent the demandant from maintaining an action for mesne profits, or for damage done to the premises, against any person, except the tenant in a writ of entry, who may have had possession of the premises, or who may be otherwise liable to such action.

Recovery of damages against other persons.

**SECT. 19.** No action, wherein the possession of land is, or may be, demanded, shall, at any stage of its progress, after having been entered in court, be abated by the death or intermarriage of either party thereto; but the court, wherein the same may be pending, shall proceed to try and determine such action, after such notice, as the court may order, shall have been duly served upon the legal representatives of any party deceased, and all others interested in his estate, as heirs, or upon the husband of any party intermarried, either personally, or by publication in some newspaper.

Real actions not to abate by death or intermarriage of a party. Proceedings, in such case. 2 Greenl. 127. 9 Pick. 259.

**SECT. 20.** If, in such cases, any heir of a deceased party is a minor, the court shall order notice to the guardian, and shall have power to appoint a guardian ad litem, if necessary, and the court shall also direct all necessary amendments to be made in the forms of proceeding.

Appointment of guardians for minors; amendments.

**SECT. 21.** Where judgment shall be for the demandant in any such case, the court may order one or more writs of possession to issue, as may be necessary; and where such judgment shall be against the representative or heirs of any deceased party, a writ of possession may be issued against all such, as may have been notified according to the provisions of the nineteenth and twentieth sections, whether they have appeared and defended said suit or not; and such judgment shall be conclusive against all, who have appeared and defended said suit, or who have been notified to appear as aforesaid.

Writs of possession to conform to the case. Estoppel.

**SECT. 22.** In all such cases, full costs shall be allowed to the prevailing party, and the court may order one or more executions to

Allowance of costs, and stay of execution in such case.

**CHAP. 145.** be issued therefor, as law and justice may require, either against the goods and estate of a deceased party in the hands of his executor or administrator, or otherwise, according to the legal rights and liabilities of the parties, and may further order any such stay of execution, as the situation of the estate may require.

Betterments allowed, after six years' possession.

1821, 47, § 1.

6 Mass. 303.

7 Mass. 472.

17 Mass. 350.

1 Greenl. 89,

348.

5 Greenl. 153.

9 Greenl. 62.

3 Fairf. 373.

5 Pick. 140.

6 Pick. 173.

8 Pick. 376.

11 Pick. 191.

15 Pick. 141.

Description of

the premises

demand.

1821, 47, § 3.

1826, 344, § 1.

Tenant may consent, that demandant may recover a specified part. Effect thereof.

1826, 344, § 4.

Tenant may have betterments, upon demurrer or default.

1826, 344, § 3.

Request, by

tenant, for appraisal of improvements, and, by demandant, for appraisal of the land.

1821, 47, § 1.

Demandant may elect to abandon.

1821, 47, § 1.

**SECT. 23.** When the demanded premises have been in actual possession of the tenant, or those under whom he claims, six successive years or more, before commencement of the action, such tenant shall be allowed a compensation for the value of any buildings and improvements on the premises, made by him or those under whom he claims, to be ascertained and adjusted in the manner hereinafter provided.

**SECT. 24.** In such action, the premises demanded shall be so defined and described in the declaration, that the defendant may know, with reasonable certainty, what lands and tenements are intended; otherwise, the court, before which the action is pending, may direct a nonsuit. And, if the tenant or the person, under whom he claims, has been in possession of a tract of land, lying in one body, for six years or more before the commencement of the action, and only a part of such tract is demanded, and the tenant alleges, that the demandant has as good title to recover the whole tract, as he has to recover the tract demanded, the tenant may request the jury to ascertain, and, by their verdict, to decide that fact; and, if they find, that the demandant has as good a title to demand the whole tract, as the part demanded, they shall proceed no further; but, on such verdict, the court shall enter judgment, that the writ abate, unless the declaration shall be so amended as to include the whole tract; which amendment the court may allow, without costs.

**SECT. 25.** If the tenant shall consent, that the demandant may recover a specified part of the demanded premises, and enter notice thereof on record, in open court, then, by consent of the demandant, judgment may be rendered in favor of him for such part, and for the defendants for the residue; and, if the demandant shall not consent to such offer, and shall not recover for any other part of the premises, he shall not recover any costs; but the defendant shall recover costs from the time of such rejected offer.

**SECT. 26.** The tenant shall enjoy the benefit of the provisions in the following sections, as to the increased value of the premises, as well when the cause is determined by the court in favor of the demandant upon demurrer, or default, as when, by verdict.

**SECT. 27.** The tenant may file a claim in writing to compensation for buildings and improvements on the premises, and a request for an estimation, by the jury, of the increased value of the premises by reason thereof; and the demandant may file a request in writing, that the jury would also estimate, what would have been the value of the premises, at the time of trial, provided no buildings had been erected, or improvements made, or waste committed; both which estimates it shall be their duty to make, and, in their verdict, state to the court.

**SECT. 28.** If, after such verdict has been given, the demandant shall, at the same term of the court, or at a subsequent term, if the

cause should be continued, make his election on record to abandon the premises to the tenant, at the value estimated by the jury, then judgment shall be rendered against the tenant, for the sum so estimated by the jury, and costs. CHAP. 145.

**SECT. 29.** At the end of one year, execution may issue for such sum, with one year's interest thereon, and costs, unless the tenant shall then have deposited with the clerk of the court, or in his office, for the demandant's use, one year's interest of said sum, and one third part of said principal sum, and all the costs, if taxed and filed, in which case, no execution shall issue at that time.

**SECT. 30.** If, within two years after the rendition of judgment, the tenant shall pay one year's interest, on the balance of the judgment due, and one third part of the original judgment, then execution shall be further stayed; otherwise, it may issue for two third parts of the original amount of the judgment, and interest thereon.

**SECT. 31.** If the tenant shall, within three years after the rendition of judgment, pay into the clerk's office the remaining third part and interest thereon, having made the several payments aforesaid, then the execution shall never issue; otherwise, it may, for the third part aforesaid and one year's interest thereon; and the premises shall be held bound as security for the amount of the judgment, liable to be taken in execution, in whole or in part satisfaction of said sum, or any unpaid part of the same, and the interest, until sixty days after an execution might have issued as aforesaid, notwithstanding any intermediate conveyance, attachment or service upon execution.

**SECT. 32.** Such execution may be extended on said land, or any part of it, and the same may be set off on execution, upon appraisement according to law; or the same may be sold on the execution, in the same manner, as an equity of redemption may be sold; and, in either case, subject to the right of redemption, as in those cases.

**SECT. 33.** Should the tenant or his heirs be evicted from the land, abandoned to him as aforesaid, by a better title of any claimant, and, if such tenant shall have given notice to the demandant or his heirs, to aid him in the defence of such claimant's action, the tenant, his executors or administrators, may recover back the money he shall have paid, with lawful interest, of said demandant or his representatives; but, if no such notice was given, then the tenant, in an action, brought against the original demandant, to recover back the price paid for the premises, may show, that he was evicted by force of a title better than that of the original demandant.

**SECT. 34.** When the demandant shall not elect to abandon the premises to the tenant, in the manner stated in this chapter, no writ of possession shall issue on the judgment rendered on the verdict, nor any new action be sustained for the land, unless the demandant shall, within one year from the rendition thereof, have paid into the clerk's office of the same court, or to such person as the court may appoint, for the use of the tenant, such sums as shall have been assessed for the buildings and improvements as aforesaid, with all interest thereon.

**SECT. 35.** Nothing, contained in this chapter concerning rents Restriction of

1 Greenl. 309.  
3 Greenl. 377.  
4 Greenl. 297.  
16 Maine, 124.

Mode of collecting the value of the land, in such case. 1821, 47, § 1.

Same subject. 1821, 47, § 1.

Same subject. 1821, 47, § 1.

Execution may be extended on the land. 1821, 47, § 1.

Remedy, if tenant be evicted. 1821, 47, § 1.

Consequence, if demandant do not abandon. 1821, 47, § 1.

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the right to bet-  
terments.  
1821, 47, § 1.  
12 Mass. 329.  
1 Greenl. 343.

Tenant not to  
commit waste.  
1821, 47, § 2.

Agreement of  
parties, as to  
value.

Tenant may  
propose a sum,  
at which the  
value may be  
estimated. Ef-  
fect thereof.  
1821, 47, § 4.  
2 Greenl. 352.

Set off of costs,  
in certain cases.  
1823, 397.

Jurors disquali-  
fied, if interest-  
ed in similar  
questions.  
1821, 47, § 6.  
14 Mass. 205.

Execution may  
issue, after a  
year.

What consti-  
tutes a posses-  
sion and im-  
provement.  
1821, 47, § 5.  
2 Greenl. 275.

and profits, or the estimate and allowance of the value of the build-  
ings and improvements, shall be construed to extend to any action  
between a mortgager and mortgagee, his heirs or assigns; or to any  
case, where the tenant, or the person under whom he claims, entered  
into possession of the premises and occupied under contract with  
the owner, which was known to the tenant, when he entered.

**SECT. 36.** No tenant, after judgment has been entered against  
him for the appraised value of the premises, shall unnecessarily cut  
wood or take away any timber, or make any strip or waste on the  
land, till the amount of such judgment shall have been satisfied.

**SECT. 37.** Whenever the parties agree, that the value of the  
buildings and improvements on the land demanded, and the value  
of the land shall be ascertained by persons, named on the record  
for that purpose, their estimates, as reported by them and recorded,  
shall, for all the purposes of this chapter, be deemed equal in its  
effect, as the verdict of a jury.

**SECT. 38.** Whenever the tenant, in any stage of such an action,  
shall, in open court, file a statement, in which he shall name the  
sum at which he consents, that the buildings and improvements  
made on said land, and also the value of the demanded premises  
should be estimated, then, if the demandant shall consent to the  
same, judgment shall be rendered, according to such consent of  
parties, in like manner as if said sums had been found by verdict;  
but, if the demandant shall not so consent, and the jury shall not  
reduce the value of the buildings and improvements below the sum  
offered, nor increase the value of the premises above the sum offered,  
he shall not recover costs arising after such offer, but the tenant  
shall recover his costs arising after such offer, and have a separate  
judgment and execution therefor, subject to the provisions of the fol-  
lowing section.

**SECT. 39.** In all cases, where the demandant does not abandon  
the premises to the tenant, the court may, on the written applica-  
tion of either party, during the term when judgment is entered,  
order the costs, recovered by the demandant, to be set off against  
the appraised value of the buildings and improvements on the land;  
a record of which order shall be made, and the court shall there-  
upon enter judgment, as shall be proper, according as the balance  
and its amount may be in favor of one party, or the other.

**SECT. 40.** No person shall be allowed to sit as a juror in the  
trial of a cause, when the value of buildings and improvements  
made on the demanded premises, and the value of the premises, are  
to be estimated as aforesaid, who, as proprietor or occupant, shall  
be interested in a similar question.

**SECT. 41.** The expiration of a year, after the rendition of judg-  
ment, shall not prevent the issuing of execution or writ of possession,  
in the cases mentioned in the twenty ninth, thirtieth and thirty first  
sections of this chapter; but it may be taken out at any time,  
within three months after any default of payment by the tenant.

**SECT. 42.** A possession and improvement of land by a tenant  
shall be deemed within the provisions of this chapter, though such  
land be not surrounded wholly by a fence, or rendered inaccessible  
by other obstructions, if such possession and improvement shall

have been open, notorious and exclusive, and comporting with the usual management and improvement of a farm by its owner, and though a portion of it may be woodland and uncultivated. **CHAP. 145.**

**SECT. 43.** If, after judgment has been rendered for the demandant in a writ of entry, either party die before a writ of possession is executed, or the cause otherwise disposed of, according to the foregoing provisions, any money, payable by the tenant, may be paid by him, his executors, or administrators, or by any person, who is entitled to the estate under him, to the demandant or his executors or administrators, with the like effect, as if both parties were living. Proceedings, if either party die, before the cause is disposed of.

**SECT. 44.** The writ of possession, whenever issuable in such case, shall be issued in the name of the original demandant against the original tenant, though either of them or both be dead; and, when executed, it shall enure to the use and benefit of the demandant, or whoever is then entitled to the premises under him, in like manner, as if it had been executed in the lifetime of the parties. How writ of possession shall issue, in such case.

**SECT. 45.** Either party may have a view, by the jury, of the place in question, if the court shall be of opinion, that such view is necessary to a just decision; provided, that the party, moving for the same, shall advance such sum to the jury as the court shall order, to be taxed against the adverse party, if the cause be decided against him on the merits, or through his default. Either party may have a view, by the jury. 1821, 84, § 16.

**SECT. 46.** If the demandant in a writ of entry shall claim an estate for life only, in the premises, and, if he shall pay any sum allowed to the tenant for improvements, he, or his executors or administrators, at the termination of his estate, shall be entitled to receive of the remainder man or reversioner, the value of such improvements as they then exist; and shall have a lien therefor on the premises in like manner, as if they had been mortgaged for payment thereof; and he may keep possession thereof, accordingly, till the same be paid; and, if the parties cannot agree on the then existing value, it may be settled in the same manner, as in case of the redemption of mortgaged property. Proceedings, if a life estate be demanded.

**SECT. 47.** When any person shall make entry into lands or tenements, of which the tenant, then in possession, or those under whom he claims, have been in actual possession for the term of six years or more, before such entry made upon him or them, against his or their consent, and shall withhold from such tenant the possession thereof, such tenant shall have a right to recover of him or entering, or of his executors or administrators, in an action of assumpsit for money laid out and expended, the increased value of the premises, by virtue of the buildings and improvements, made by the tenant, or those under whom he claims. Remedy, if tenant be ousted, after six years' possession. 1821, 62, § 5.

**SECT. 48.** Such right and value shall be ascertained by the same principles, as regulate such right and value under the provisions of this chapter. How available.

**SECT. 49.** All real actions, which shall be pending in court, or duly commenced, at the time this chapter shall become a law, shall proceed and be conducted to final judgment or other final disposal, in like manner, as if this chapter had never been enacted. Pending actions not affected by this chapter.

**SECT. 50.** In all actions respecting lands or any interest therein, Cases, in which



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defendant may impeach the plaintiff's title deeds. 1840, 73.

any title deed, offered in evidence, may be impeached by the defendant, as obtained by fraud, where the grantor, if a party, could so impeach it; provided, the defendant has been in the open, peaceable and adverse possession of the premises for the term of twenty years.

## CHAPTER 146.

## OF LIMITATION OF PERSONAL ACTIONS.

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| <p>SECT. 1. Certain actions must be commenced within six years.</p> <p>2. Actions against sheriffs.</p> <p>3. Actions of assault and battery, and slander.</p> <p>4. Actions for escapes.</p> <p>5. Scire facias against bail.</p> <p>6. Actions against indorsers of writs.</p> <p>7. Exception of bank notes and witnessed notes.</p> <p>8. Exception of cases where a specific limitation is provided.</p> <p>9. Case of open and mutual account.</p> <p>10. Saving of rights of infants, and certain others.</p> <p>11. General limitation to twenty years.</p> <p>12. Saving, in certain cases of failure of suits.</p> <p>13. Provision, in case of the death of either party before the suit is commenced.</p> <p>14. Saving, of rights of alien enemies, during a war.</p> <p>15. Limitation of suits by individuals, for penalties.</p> <p>16. Limitation of suits by the state, or indictments on penal statutes.</p> <p>17. What is a commencement of an action.</p> | <p>Sect. 18. Limitation extended, in cases of fraud.</p> <p>19. Renewal of promise must be in writing.</p> <p>20. New promise by one, not to deprive another joint promiser of the benefit of the limitation.</p> <p>21. Judgment, when the action is barred as to one defendant, and not the others.</p> <p>22. Non joinder of defendants shall not abate a suit, if the action be barred against the one not sued.</p> <p>23. Effect of indorsements of partial payments.</p> <p>24. No promiser affected thereby, except those making the payments.</p> <p>25. Presumption of payment, after twenty years.</p> <p>26. Application of this chapter to set off.</p> <p>27. This chapter not to affect promises heretofore made.</p> <p>28. Provision, if defendant be out of the state.</p> <p>29. Limitation of actions against executors and administrators.</p> |
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Certain actions must be commenced within six years. 1821, G2, § 7. 17 Mass. 61. 9 Greenl. 74. 15 Maine, 167. 4 Pick. 78. 9 Pick. 488. 21 Pick. 404. 22 Pick. 430.

SECTION 1. The following actions shall be commenced, within six years next after the cause of action shall accrue, and not afterwards, namely:

*First.* All actions of debt, founded upon any contract or liability not under seal, except such, as are brought upon the judgment or decree of some court of record of the United States, or of this, or some other of the United States, or of some justice of the peace in this state;

*Second.* All actions upon judgments, rendered in any court, not being a court of record, except justices of the peace in this state;

*Third.* All actions for arrears of rent;

*Fourth.* All actions of assumpsit, or upon the case, founded on any contract or liability, express or implied;

*Fifth.* All actions for waste and all actions of trespass on land,

and all actions of trespass, except those of trespass for assault, battery and false imprisonment; CHAP. 146.

*Sixth.* All actions of replevin, and other actions for taking, detaining or injuring goods or chattels;

*Seventh.* All other actions on the case, except actions for slanderous words and for libels.

**SECT. 2.** All actions against a sheriff, except for escape of prisoners committed on execution, for the negligence or misconduct of his deputies, shall be commenced within four years next after the cause of the action shall accrue. Actions against sheriffs.  
1821, 62, § 16.  
16 Maine, 408.

**SECT. 3.** All actions of assault and battery and for false imprisonment, and all actions for slanderous words and for libels, shall be commenced within two years, next after the cause of action shall accrue. Actions of assault and battery, and slander.  
1821, 62, § 7.

**SECT. 4.** All actions, for the escape of prisoners committed on execution, shall be actions on the case, and shall be commenced within one year after the cause of action shall accrue. Actions for escapes.  
1834, 91, § 2.

**SECT. 5.** No scire facias shall be served on bail, unless within one year next after judgment rendered against the principal. Scire facias against bail.  
1821, 67, § 8.

**SECT. 6.** All actions against an indorser of a writ must be commenced within one year, next after judgment entered in the original action. Actions against indorsers of writs.

**SECT. 7.** None of the foregoing provisions shall apply to any action brought upon a promissory note, which is signed in the presence of an attesting witness, nor to an action brought upon any bills, notes or other evidences of debt, issued by any bank. Exception, of bank notes and witnessed notes.  
1821, 62, § 10.  
1838, 343.

7 Greenl. 25. 4 Pick. 382. 8 Pick. 246. 1 Metc. 21. 16 Maine, 470.

**SECT. 8.** Nor shall any of the provisions in this chapter be construed to apply to any case or suit, which by any particular statute is limited to be commenced within a different specified time, but such suits may be commenced within such time. Exception, in cases where a specific limitation is provided.  
1821, 62, § 14.

**SECT. 9.** In all actions of debt or assumpsit, brought to recover the balance due upon a mutual and open account current, the cause of action shall be deemed, to have accrued at the time of the last item proved in such account. Case of open and mutual account.  
2 Mass. 217.  
4 Greenl. 337.  
6 Pick. 362.

**SECT. 10.** If any person, entitled to bring any of the before mentioned actions, shall, at the time when the cause of action accrues, be within the age of twenty one years, a married woman, insane, imprisoned, or without the limits of the United States, such person may bring the actions within the times in this chapter respectively limited, after the disability shall be removed. Saving, of rights of infants, and certain others.  
1821, 62, § 9.  
10 Mass. 29.  
14 Mass. 205.  
13 Maine, 397.  
11 Pick. 36.

**SECT. 11.** All personal actions on any contract, not limited by any of the foregoing sections, or any other law of the state, shall be brought, within twenty years after the accruing of the cause of action. General limitation to twenty years.

**SECT. 12.** When a writ shall fail of a sufficient service or return by any unavoidable accident, or by the default or negligence of any officer, to whom it was delivered or directed; or when such writ shall be abated, or the action otherwise avoided and defeated, for any matter of form, or by the death of either party; or, if a judgment for the plaintiff shall be reversed on a writ of error; in such cases, the plaintiff may commence a new action, on the same demand, within six months after the abatement or determination of Saving, in certain cases of failure of suits.  
1821, 62, § 11.  
8 Greenl. 447.  
1 Fairf. 399.  
2 Pick. 608.  
16 Pick. 383.

**CHAP. 146.** the original suit, or reversal of the judgment in the same; and, if the cause of action by law survives, his executor or administrator, in case of his death, may commence such new action, within said six months.

Provision, in case of the death of either party, before the suit is commenced.  
1821, 62, § 12.  
15 Mass. 455.  
10 Pick. 112.  
17 Pick. 383.

Saving, of rights of alien enemies during a war.

Limitation of suits by individuals, for penalties.

1821, 62, § 14.  
5 Greenl. 490.  
22 Pick. 495.

Limitation of suits by the state, or indictments on penal statutes.

1821, 62, § 14.  
What is a commencement of an action.

1821, 62, § 10.  
Limitation extended, in cases of fraud.  
3 Mass. 201.  
3 Greenl. 405.  
7 Greenl. 370.  
9 Greenl. 131.

Renewal of promise must be in writing.  
14 Mass. 425.  
15 Maine, 360, 443.  
13 Pick. 206.  
22 Pick. 291.

New promise by one, not to deprive another joint promiser of the benefit of the limitation.  
16 Mass. 429.

Judgment, when the action is barred as to one defendant, and not the others.  
7 Greenl. 25.  
15 Maine, 390.

**SECT. 13.** If any person, entitled to bring any of the actions before mentioned, or liable to any such action, shall die before the expiration of the time herein limited therefor, or within thirty days after the expiration of said term, and, if the cause of action survives by law, the action may be commenced by or against the executor or administrator of the deceased person, as the case may be, at any time within two years after administration or letters testamentary granted, and not afterwards, if barred by this chapter.

**SECT. 14.** If any person shall be disabled to prosecute an action in this state, by reason of his being an alien, subject or citizen of any country at war with the United States, the time of continuance of such war shall not be deemed any part of the respective periods, herein limited for the commencement of any of the before mentioned actions.

**SECT. 15.** All actions and suits for any penalty or forfeiture on any penal statute, brought by any person, to whom the penalty or forfeiture is given in whole or in part, shall be commenced within one year next after the offence was committed, and not afterwards.

**SECT. 16.** If not so prosecuted by any individual, a prosecution by suit, indictment or information may be commenced therefor, in the name and for the use of the state, at any time within two years next after the offence was committed, and not afterwards.

**SECT. 17.** The time, when a writ is actually made, with an intention of service, shall be deemed the commencement of a suit in respect to the limitations of this chapter.

**SECT. 18.** If any person, liable to any of the actions mentioned in this chapter, shall fraudulently conceal the cause of such action from the knowledge of the person entitled thereto, or, if a fraud shall be committed, which entitles any person to an action, in either case, the action may be commenced at any time within six years after the person, entitled thereto, shall discover that he has just cause of action, but not afterwards.

**SECT. 19.** In actions of debt or upon the case, founded upon any contract, no acknowledgment or promise shall be allowed, as evidence of a new or continuing contract, whereby to take any case out of the operation of the provisions of this chapter, or to deprive any party of the benefit thereof, unless such acknowledgment or promise be an express one, and made or contained in some writing, signed by the party chargeable thereby.

**SECT. 20.** If there are two or more joint contractors, no such contractor, executor or administrator, shall lose the benefit of the provisions of this chapter, so as to be chargeable by reason only of any acknowledgment or promise, made or signed by any other or others of them.

**SECT. 21.** In actions, commenced against two or more joint contractors, if it shall appear on trial, or otherwise, that the plaintiff is barred by the provisions of this chapter, as to one or more of the defendants, but is entitled to recover against any other or others

of them, by virtue of a new acknowledgment or promise or otherwise, judgment shall be rendered for the plaintiff, as to any of the defendants against whom he has a right to recover, and for the other defendant or defendants against the plaintiff.

**SECT. 22.** If, in any action on contract, the defendant shall plead in abatement, that any other person ought to have been jointly sued, and issue be joined on that plea, and if it shall appear, on the trial, that the action was, by reason of the provisions of this chapter, barred against the person so named in the plea, the said issue shall be found for the plaintiff.

**SECT. 23.** Nothing, contained in the preceding four sections, shall alter, take away, or lessen the effect of payment of any principal or interest, made by any person; but no indorsement or memorandum of any such payment, written or made on any promissory note, bill of exchange, or other writing, by or on behalf of the party, to whom such payment shall be made, or purport to be made, shall be deemed sufficient proof of payment, so as to take the case out of the operation of the provisions of this chapter.

**SECT. 24.** If there are two or more joint contractors, or joint executors or administrator of any contractors, no one of them shall lose the benefit of the provisions of this chapter, so as to be chargeable by reason only of any payment, made by any other or others of them.

**SECT. 25.** Every judgment and decree of any court of record of the United States, or of this or any other state, or of a justice of the peace in this state, shall be presumed to be paid and satisfied, at the expiration of twenty years after any duty or obligation accrued by virtue of such judgment or decree, to do or perform the matter or thing, therein required.

**SECT. 26.** All the provisions of this chapter shall apply to the case of debt or contract, alleged or filed by way of set off, on the part of the defendant; and the time of such limitation of such debt or contract shall be computed in like manner, as if an action had been commenced therefor, at the time when the plaintiff's action was commenced, unless the defendant be deprived of the benefit of the set off, by the nonsuit or other act of the plaintiff; and, when the party so filing the set off, is thus defeated of a judgment on the merits of such debt or contract, he may commence a new action thereon within the time limited, as provided in the twelfth section of this chapter, for bringing a new action for the reasons therein mentioned.

**SECT. 27.** None of the provisions of this chapter, respecting the acknowledgment of a debt, or a new promise to pay it, shall apply to any such acknowledgment or promise, made before this chapter shall take effect as law; but every such last mentioned acknowledgment or promise, though not in writing, shall have the same effect, as if no provision, relating thereto, had been made, as contained in this chapter.

**SECT. 28.** If, at the time when any cause of action, mentioned in this chapter, shall accrue against any person, he shall be out of the state, the action may be commenced within the time herein limited therefor, after such person shall come into the state, and if,

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3 Pick. 291.

Non joinder of defendants shall not abate a suit, if the action be barred against the one not sued.

Effect of indorsements of partial payments.

No promiser affected thereby, except those making the payments.

Presumption of payment after twenty years. 22 Pick. 533.

Application of this chapter to set offs. 1821, 62, § 13. 18 Pick. 521.

This chapter not to affect promises, heretofore made.

Provision, if defendant be out of the state. 1821, 62, § 9. 10 Mass. 29. 16 Pick. 359. 18 Pick. 532.

**CHAP. 146.** after any cause of action shall have accrued, the person against whom it shall have accrued, shall be absent from, and reside without the state, the time of his absence shall not be taken, as any part of the time limited for the commencement of the action.

Limitation of actions against executors and administrators.  
 13 Mass. 201.  
 15 Mass. 6.  
 16 Mass. 429.  
 1 Greenl. 156.  
 3 Greenl. 17.  
 5 Greenl. 108.  
 14 Maine, 254, 320.  
 4 Pick. 283.  
 5 Pick. 140, 321.  
 6 Pick. 276.  
 8 Pick. 108, 394.

**SECT. 29.** No executor or administrator, after having given bond and notice of his appointment, as provided in chapter, one hundred and twenty, shall be held to answer to the suit of any creditor of the deceased, unless it shall be commenced within four years from the time of his giving bond, as aforesaid ; excepting in the cases mentioned in said one hundred and twentieth chapter, where the provisions are distinctly stated.

**CHAPTER 147.**

**OF LIMITATIONS OF REAL ACTIONS AND OF RIGHTS OF ENTRY.**

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| <p><b>SECT. 1.</b> Rights of entry and of action, barred in twenty years.</p> <p>2. From what time computation is to be made.</p> <p>3, 4, 5. When such right shall be deemed to have accrued.</p> <p>6. When action may be brought by a minister or other sole corporation.</p> <p>7. Saving, in favor of infants, and certain other disabled persons.</p> <p>8. Further saving, if the person, first entitled, die during such disability.</p> <p>9. Consequence, if tenant in tail, or remainder man die before the expiration of the limitation.</p> | <p><b>SECT. 10.</b> Time, when the foregoing limitations shall take effect. Saving, as to minors, and certain others.</p> <p>11. What shall constitute such a disseizin as to bar the right of recovery.</p> <p>12. Limitation of actions by the state.</p> <p>13. Limitations not to take effect, in certain cases, where first suit fails.</p> <p>14. Right of way, or other easement, when acquired by adverse user.</p> <p>15. Notice, to prevent such acquisition.</p> <p>16. Such notice, how given.</p> |
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Rights of entry and of action, barred in twenty years.  
 1821, 62, § 3.  
 10 Pick. 297.

**SECTION 1.** No person shall commence any real or mixed action for the recovery of lands, or make an entry thereon, unless within twenty years after the right to make such entry, or bring such action, first accrued ; or within twenty years after he, or those, under or from whom he claims, shall have been seized or possessed of the premises ; except as hereinafter provided.

From what time computation is to be made.  
 14 Maine, 163.

**SECT. 2.** If such right or title first accrued to an ancestor or predecessor of the person, who brings the action or makes the entry, or to any other person from, by or under whom he claims, the said twenty years shall be computed from the time, when the right or title so first accrued to such ancestor, predecessor or other person.

When such right shall be deemed to have accrued.

**SECT. 3.** In the construction of this chapter, the right of entry, or of action to recover land, shall be deemed to have first accrued at the respective times hereinafter mentioned :

*First.* When a person shall be disseized, his right of entry shall be deemed to have accrued at the time of such disseizin ;

*Second.* When he claims, as heir or devisee of one who died seized, his right shall be deemed to have accrued at the time of such death, unless there is a tenancy by the curtesy or other estate, intervening after the death of such ancestor or devisor ; in which

case, his right shall be deemed to accrue, when such intermediate estate shall expire, or when it would have expired, by its own limitation ;

*Third.* When there is such an intermediate estate, and, in all cases, when the party claims by force of any remainder or reversion, his right, so far as it is affected by the limitation herein prescribed, shall be deemed to accrue, when the intermediate estate would have expired by its own limitation, notwithstanding any forfeiture thereof, for which he might have entered at an earlier time.

SECT. 4. The preceding clause shall not prevent any person from entering, when entitled to do so, by reason of any forfeiture or breach of condition ; but, if he claims under such a title, his right shall be deemed to have accrued, when the forfeiture was incurred, or the condition broken. Same subject.

SECT. 5. In all cases not specially provided for, the right of entry shall be deemed to have accrued, when the claimant or the person under whom he claims, first became entitled to the possession of the premises under the title, upon which the entry or action is founded. Same subject.

SECT. 6. If any minister or other sole corporation shall be disseized, any of his successors may enter upon the premises, or may bring an action for the recovery of them, at any time within five years after the death, resignation or removal of the person disseized, notwithstanding the twenty years after the disseizin shall have expired. When action may be brought by a minister, or other sole corporation.

SECT. 7. If, at the time when such right of entry, or of action upon or for any lands, shall first accrue, the person, entitled to such entry or action, shall be within the age of twenty one years, or a married woman, insane, imprisoned, or absent from the United States, such person, or any one claiming from, by or under him, may make the entry, or bring the action at any time within ten years after such disability shall be removed, notwithstanding the twenty years, before limited in that behalf, shall have expired. Saving, in favor of infants, and other disabled persons. 1821, 62, § 4. 13 Maine, 397.

SECT. 8. If the person, first entitled to make such entry or bring such action, shall die during the continuance of any of the disabilities mentioned in the preceding section, and no determination or judgment shall have been had of or upon the title, right or action which accrued to him, the entry may be made, *or* [or] the action brought by his heirs, or any other person claiming from, by or under him, at any time within ten years after his death, notwithstanding the said twenty years shall have elapsed ; but no such further time for making such entry, or bringing such action, beyond what is herein before prescribed, shall be allowed, by reason of the disability of any other person. Further saving, if the person, first entitled, die during such disability. 1821, 62, § 4.

SECT. 9. When a tenant in tail, or a remainder man in tail, shall die, before the expiration of the period herein before limited for making any entry, or bringing an action for lands, no person claiming any estate, which such tenant in tail or remainder man might have barred, shall make an entry, or bring an action, to recover such land, but within the period, during which the tenant in tail, or remainder man, if he had so long lived, might have made such entry, or brought such action. Consequence, if tenant in tail, or remainder man, die before expiration of the limitation. 6 Mass. 328.

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Time, when the foregoing limitations shall take effect. Saving, as to minors, and certain others. 16 Pick. 161.

SECT. 10. The limitations, herein before prescribed, as to ~~the~~ time, within which an action may be brought to recover any ~~land~~ shall take effect from and after the first day of April, in the year one thousand, eight hundred and forty three; and, if any person, who shall then be entitled to bring any real action, which is to be abolished after that day, as is mentioned in chapter, one hundred and forty five, shall then be within the age of twenty one years, a married woman, insane, imprisoned, or without the limits of the United States, the action may be brought at any time within five years after such disability shall cease, or after the death of the person, so disabled: provided, that no such action shall be maintained, after it would have been barred by the statutes of limitation in force, and immediately before the time when this chapter shall become a law.

What shall constitute such a disseizin, as to bar the right of recovery. 1821, 62, § 6. 4 Mass. 416. 10 Mass. 146. 13 Maine, 131.

SECT. 11. To constitute a disseizin, or such exclusive and adversary possession of lands, as to bar or limit the right of the true owner thereof to recover the same, it shall not be necessary, that such lands shall be surrounded with fences, or rendered inaccessible by water; but it shall be sufficient, if the possession, occupation and improvement are open and notorious, and comporting with the ordinary management of a farm; although that part of the same, which composes the woodland belonging to such farm, and used therewith as a wood lot, shall not be inclosed as before mentioned.

Limitation of actions by the state.

SECT. 12. No real or mixed action, for the recovery of any lands, shall be commenced by or on behalf of the state, unless within twenty years from and after the day, on which this chapter shall become a law, or within twenty years next after the time of the accruing of the title to the state.

Limitations not to take effect, in certain cases, where first suit fails.

SECT. 13. When any writ, in a real or mixed action, shall fail of sufficient service or return by an unavoidable cause, or by the default or negligence of any officer to whom it was delivered, or directed for service, or when such writ shall be abated, or the action otherwise avoided or defeated for any matter of form, or by the death or intermarriage or other disability of either party, accruing since the last continuance, or if a judgment for the demandant shall be reversed on a writ of error, the demandant may commence a new action, at any time within six months after abatement or determination of the first suit, or reversal of the judgment of the same.

Right of way, or other easement, when acquired by adverse user.

SECT. 14. No person shall acquire any right or privilege of way, air or light, or any other easement, from, in, upon or over the land of another, by the adverse use and enjoyment thereof; unless such use shall have been continued, uninterrupted for twenty years.

Notice, to prevent such acquisition.

SECT. 15. The owner of the land, in such cases, for the purpose of preventing such right, as is mentioned in the preceding section, may give notice, in writing, to the person claiming such right or privilege, of his intention to contest such right or easement; and such notice, being served and recorded, as hereinafter stated, shall be deemed an interruption of such use, and prevent the acquisition of a right thereto, by continuance of the use thereof for any length of time.

Such notice, how given.

SECT. 16. Such notice may be given by an officer, as in civil

ions, by his giving to such claimant, or his agent or guardian, if he state, an attested copy of such writing, or by leaving the same at his dwelling house ; or, if not resident in the state, then a copy may be left with the tenant or occupant, if there be one, of the estate ; and, if not, then such copy shall be affixed to the house or other conspicuous part of the premises ; and the return of the officer shall be made on the original writing, and the whole be recorded in the registry of deeds in the county, or registry district, within which such estate lies, within three months from the time of such service : and such notice may be given by the agent or guardian of the owner of the land.

## CHAPTER 148.

### OF THE RELIEF OF POOR DEBTORS.

**ARTICLE I. OF ARRESTS AND DISCLOSURES ON MESNE PROCESS.**

1. No arrest on mesne process on contract, except where specially provided.
2. Debtor, about to leave the state, may be arrested in certain cases.
3. Disclosure, on such arrest.
4. Notice to be given to the plaintiff.
5. Mode of making disclosure.
6. Justices may adjourn.
7. Adjudication of the justices ; effect of discharge.
8. Lien on property disclosed, how preserved.
9. Arrests allowed, in actions not founded on contract.
10. Defendant may, in all cases, disclose, on return of writ.
11. Effect thereof ; lien on property disclosed.
12. Certificate of real estate disclosed, to be filed in registry of deeds.
13. Preservation of lien on personal estate.
14. Disclosure on mesne process, by consent of parties.
15. Execution to issue against the body, unless there be a disclosure and discharge.
16. Certain property, not attachable, to be delivered up, on disclosure.
17. Persons arrested may give bond to disclose in a certain time after judgment.

**ARTICLE II. OF ARRESTS AND IMPRISONMENT ON EXECUTION, AND OF DISCLOSURES THEREON, OR AFTER JUDGMENT, AND EFFECT THEREOF.**

18. No arrest on execution on contract, if debt be less than ten dollars.
19. Arrests in other cases, and object thereof.
20. Bond may be given on such arrest. Condition and effect thereof.
21. Application to a justice, by a debtor under bond or imprisoned, for privilege of the poor debtor's oath.
22. Justice to appoint the place, and cite the creditor.
23. Citation, how served.
24. Examination before two justices of the quorum.
- 25, 26. Mode of examination.
27. When the justices shall administer the oath.
28. Form of the poor debtor's oath.
29. Certain property disclosed, not liable to attachment, may be appraised off to the creditor.
30. Creditor may accept it, within thirty days.
31. Justices' certificate of administration of the oath.
32. Effect of such certificate.
33. Preservation of creditor's lien on real estate disclosed.
34. Lien on personal estate disclosed. Consequence, if debtor, or any person, transfer or conceal the same.
35. Proceedings, if debtor have given bond, on mesne process.
36. Debtor, in such case, may go at large thirty days, during the lien on the property disclosed.



**CHAP. 148. SECT. 37.** Effect of creditor's election, to arrest on execution, or otherwise.

38. Bond taken on execution to be returned therewith, for use of the creditor.
39. Amount recoverable thereon, if forfeited.
40. Persons, incompetent as witnesses, may take the poor debtor's oath.
41. Costs for creditor, if debtor be not discharged.
42. Discharge of debtor's body, no discharge of the debt.

**ARTICLE III. GENERAL PROVISIONS AND RULES APPLICABLE TO CERTAIN SPECIFIED CASES OF ARREST AND IMPRISONMENT.**

43. Bond to be valid, though not taken for the exact amount.
44. Right to bail not impaired.
45. Limitation of suits on bonds.
46. Manner of selecting the justices to take a disclosure.
- 47, 48. Liability of a debtor, if he disclose falsely.
49. Liability of persons aiding in fraudulent concealment or transfer of property.
50. Persons arrested for taxes, entitled to the privileges of this chapter.
51. Variation of form of the oath, in such case.
52. Change of the form of the certificate.
53. Privileges extended to collectors and other officers, arrested for taxes committed to them.
54. Disabilities of persons committed for wilful trespass.
55. Service of a citation on a corporation, creditor.

**SECT. 56.** Prison keeper may require the creditor to support the debtor. Special provision, if committed on several precepts.

57. Adjustment of price of articles furnished to prisoner.
58. Citation to one of several joint creditors, to hear disclosure, sufficient.
59. Effect of voluntary release by creditor from arrest on execution.
60. Officer may indorse such release on the execution, and then proceed to levy the same on property.
61. How judgment may be kept in force, after such release.
62. Judges of municipal and police courts may act as justices of the peace and quorum.

**ARTICLE IV. SPECIAL PROVISIONS RELATING TO DEBTORS TO THE STATE.**

63. Such debtor may apply to the judge of the district court.
64. Notice of hearing to be given to the county attorney or attorney general.
65. Proceedings, and power to release such debtor.
66. Judge may discharge him, or discharge the debt, on payment or security for a part.
67. Jailer to comply with the decision of the judge.
68. Adjudication to be entered on the record.
69. Same powers vested in the county commissioners.
70. Application by such debtor to take the poor debtors' oath, and citation to the county attorney.
71. Duty of county attorney to attend.
72. Oaths, and certificates in such cases.

**ARTICLE I. OF ARRESTS AND DISCLOSURES ON MESNE PROCESS.**

No arrest on mesne process on contract, except where specially provided.  
1835, 195, § 2.

Debtor, about to leave the state, may be arrested in certain cases.  
1835, 195, § 1, 3.  
1836, 245, § 1.  
5 Greenl. 291.  
16 Maine, 398.

**SECTION 1.** No person shall be arrested on mesne process, in any suit brought on any contract, express or implied, or brought on any judgment founded on such contract, except as provided in the following section; and the writ or other process shall be so varied, as not to require the arrest of the defendant.

**SECT. 2.** Any person, whether a resident within this state or not, may be arrested and held to bail, or committed to prison on mesne process, on any contract express or implied, when the sum demanded amounts to ten dollars, or on a judgment founded on contract, when the debt, originally recovered and still remaining due, is ten dollars or more, exclusive of interest on such judgment, when he is about to depart and reside beyond the limits of this

state, with property or means exceeding the amount required for his own immediate support; provided, that the creditor, his agent or attorney, shall make oath before a justice of the peace, to be certified by such justice on the said process, that he has reason to believe, and does believe, that such debtor is about to depart and reside, and to take with him property or means as aforesaid, and that the demand in the said process, or the principal part thereof, amounting to at least ten dollars, is due to him. CHAP. 148.

SECT. 3. On the arrest or imprisonment of any debtor, by virtue of the preceding section, he may, on request to the officer, or jailer, who has him in custody, be taken before two disinterested justices of the peace and quorum, to be selected, as provided in the forty sixth section, to disclose the actual state of his affairs. Disclosure, on such arrest. 1835, 195, § 4. 4 Greenl. 494. 15 Maine, 55.

SECT. 4. Previous to such disclosure, he shall give due notice to the creditor, his agent or attorney, of his intention, and of the time and place for attending to said disclosure; and that such creditor, agent or attorney may be present, and select one of the justices, and be heard thereon; which notice shall not be less than one day, for every twenty miles' travel, exclusive of Lord's days. Notice to be given to the plaintiff. 1835, 195, § 1.

SECT. 5. If the debtor shall, at the time and place appointed, make, to the satisfaction of said justices, a full disclosure of the actual state of his affairs, and of all his estate, property, rights and credits in possession, expectation or reversion, and answer all proper interrogatories in regard to the same, and shall sign and offer to make oath to the truth of his said disclosure and answers, before such justices, they shall administer to him such oath, and may hear such further and proper evidence, as may be offered upon either side. Mode of making disclosure. 1835, 195, § 4.

SECT. 6. The said justices shall have power to adjourn, from time to time, if they see cause; and, if either of the said justices shall not be present at such adjournment, the other may adjourn to another time, but no such adjournment or adjournments, shall exceed three days in the whole, exclusive of the Lord's day. Justices may adjourn. 1831, 520, § 7.

SECT. 7. On such examination, the said justices may discharge such debtor from arrest and imprisonment, or remand him into the custody of the jailer or other officer, as the case may require; and, in case of such discharge, no execution, issuing on the judgment in such suit or process, shall run against the body of such debtor. Adjudication of the justices; effect of discharge. 1835, 195, § 4. 14 Maine, 475.

SECT. 8. All attachable property, disclosed by such examination, or so much thereof as the creditor may designate, to satisfy his demand against the debtor, shall be held as attached from the time of such disclosure, and until thirty days after final judgment, as in other cases of attachment; and the officer shall make return thereof on the writ or process, certifying the fact that the property was so disclosed; and, if it be real estate, shall certify the same to the register of deeds, as provided in section, thirty two, of chapter, one hundred and fourteen. And, if the creditor require it, at any time before final judgment in the suit, the officer shall take into his custody any part of the personal property, so disclosed, sufficient to secure the demand, and hold the same as in other cases. Lien on property disclosed, how preserved. 1835, 195, § 5.

SECT. 9. In all actions, not founded on contract, or on a judgment on such contract, the original writ or process shall run against the body of the defendant, and he may be thereon arrested and Arrests allowed, in actions not founded on contract. 1836, 245, § 2.

**CHAP. 148.** imprisoned; or he may give bail, as provided in chapter, one hundred and fourteen.

Defendant may, in all cases, disclose on return of writ.  
1835, 195, § 6.

**SECT. 10.** Whenever any person shall be served with an original writ or other mesne process, founded on such contract or judgment, in any other manner than by arrest of the body, such person may, at any time before final judgment, appear before any court or justice, before whom such writ or process may be pending, or before a disinterested commissioner or commissioners to be appointed by such court or justice, and may submit himself to examination; and such court, justice or commissioner shall, after giving like notice of the time and place of hearing, as is provided in the fourth section, then and there proceed and take the disclosure of such person; and the like proceedings shall be had before such court, justice or commissioner, as is provided in the fifth and sixth sections, when before two justices of the peace and quorum, and with the like effect.

Effect thereof. Lien on property disclosed.  
1835, 195, § 6.

**SECT. 11.** On the whole examination, the said court, justice or commissioner may, except as provided in the sixteenth section of this chapter, adjudge and determine, that the execution on the judgment, which the plaintiff may recover in such suit, shall run against the property only of the defendant, or otherwise, as justice may require, on the facts so disclosed or proved; and all attachable estate or property, so disclosed, shall, from the time of such disclosure, be held attached, as provided in the eighth section, and be further subject to the provisions of the two following sections.

Certificate of real estate disclosed, to be filed in registry of deeds.

**SECT. 12.** If the property, so disclosed, be real estate, the said court, justice or commissioner, as the case may be, shall deliver to the plaintiff a certificate thereof, stating the names of the parties and the amount of the claim in the writ, which the plaintiff shall cause to be filed with the register of deeds for the county or district, where the real estate is situated, within five days after the date thereof; and the register shall proceed with the said certificate, in the same manner, as he is required to do, with the returns of officers making attachments on real estate, under the provisions of chapter, eleven, and be entitled to the same fees from the plaintiff.

Preservation of lien on personal estate.

**SECT. 13.** If personal estate, liable to attachment, be disclosed, on application of the plaintiff, stating, that he is apprehensive that said property may be removed or concealed, so as to render it impracticable to seize the same on execution, the court in term time, or any justice thereof in vacation, or the justice of the peace before whom the suit is pending, may issue an order under the seal of the court or justice of the peace, and signed by the clerk of the court or by the justice, as the case may be, directing any officer authorized to serve processes in such suit, to take such property into his custody and hold the same, as if originally attached; which order such officer is hereby authorized to execute accordingly.

Disclosure on mesne process, by consent of parties.  
1835, 195, § 6.

**SECT. 14.** At any time before or after the return day of any such writ or process, as is described in the tenth section, the parties to the suit may, pursuant to any agreement by them made in writing, appear before any justice of the peace and of the quorum, in the county where the suit may be pending; and the defendant shall make the same disclosures and submit to the same examination and proceedings, as is provided in the said tenth section, when

had before a commissioner; and the record of the same shall, before final judgment, be returned to the court or justice, before which the suit shall be pending; and the like proceedings shall be had, by such court or justice, as if the same disclosures had taken place before a commissioner, duly appointed for the purpose.

**SECT. 15.** If no disclosure and examination be made or had before final judgment by the defendant, as is herein before provided, or if the result of such disclosure and examination should be adverse to the defendant's right to exemption from arrest, the execution, which may issue against him on final judgment, shall run against his body.

Execution to issue against the body, unless there be a disclosure and discharge. 1835, 195, § 6.

**SECT. 16.** If, on the disclosure and examination of any debtor, made pursuant to the fifth and tenth sections of this chapter, previously to final judgment, it shall appear, that such debtor possesses or has in his power, or has, with intent to protect the same from his creditors, assigned or secreted, or otherwise disposed of any bank bills, notes, accounts, bonds or other contracts, or other property, not exempted by any statute from attachment, but which cannot be come at, to be attached, from its nature or otherwise, such debtor, if under arrest, shall not be released, neither in any case shall his person be exempted from arrest, on any execution to be issued on the judgment to be recovered in such suit, unless the debtor shall assign and deliver to such person, as the examining magistrates or court, or commissioners may appoint, all such property, or so much thereof, as such magistrates or court, or commissioners may adjudge to be sufficient security for the creditor; to be held by such person, under the direction of the court or justice before which the suit shall be pending, in trust for the parties, in order that the same may be applied and appropriated, as hereinafter provided in sections, twenty nine and thirty.

Certain property, not attachable, to be delivered up, on disclosure.

**SECT. 17.** Whenever any person shall be arrested or imprisoned on mesne process, in any civil action, he may be also released from such arrest by giving bond to the plaintiff, with surety or sureties to the acceptance of the plaintiff, or approved by two justices of the peace and of the quorum of the county, where such arrest or imprisonment may be, in double the sum for which he is arrested or imprisoned; conditioned, that he will, within fifteen days after the last day of the term of the court, at which the judgment shall be rendered in such suit, or after the day of the rendition of judgment, if before a justice of the peace, notify the judgment creditor, or his agent or attorney to attend at a certain place in the county, and at a time, to be fixed within thirty days after such notice, and not less than fifteen days, for the purpose of disclosure and examination under the provisions of the thirty fifth section of this chapter; and that he will, at such time and place, submit himself to examination, make true disclosure of his business affairs and property on oath, and abide the order of the justices of the peace and of the quorum thereon, in manner provided in said thirty fifth, thirty sixth and thirty seventh sections; and, if such bond be taken by the officer, serving the writ, he shall return the same to the court or justice, where the suit is pending.

Person arrested may give bond, to disclose in a certain time after judgment. 1835, 195, § 7. 1836, 245, § 3, 4. 4 Greenl. 10.

**CHAP. 148. ARTICLE II. OF ARRESTS AND IMPRISONMENT ON EXECUTION, AND OF DISCLOSURES THEREON, OR AFTER JUDGMENT, AND EFFECT THEREOF.**

No arrest on execution on contract, if debt be less than ten dollars.  
1835, 195, § 1.

**SECT. 18.** No person shall be arrested on any execution, issued on any judgment in any suit, founded on any contract, express or implied, where the debt is less than ten dollars, exclusive of costs, or in any suit founded on any prior judgment on contract, where the amount of the original debt, remaining due, is less than ten dollars, exclusive of costs; and the form of the process shall be varied accordingly.

Arrest in other cases, and object thereof.  
1836, 245, § 2.

**SECT. 19.** In all other cases, except where express provision is by law made to the contrary, executions shall run against the body of the judgment debtor; and he may be arrested and imprisoned thereon, for the purpose of obtaining a discovery of his property, wherewith to satisfy the same, as hereinafter stated.

Bond may be given on such arrest. Condition and effect thereof.  
1835, 195, § 8.  
1836, 245, § 4.  
5 Greenl. 353.  
1 Fairf. 121.  
1 Metc. 127.

**SECT. 20.** Wherever any debtor arrested or imprisoned on execution, issued on any judgment in a civil suit, shall give bond to the creditor in execution, with sufficient surety or sureties, to be approved in writing by the creditor, or by two justices of the peace and of the quorum of the county, where the arrest is made, in double the sum for which he is so arrested or imprisoned, conditioned, that he will, within six months thereafter, cite the creditor before two justices of the peace and of the quorum, and submit himself to examination, and take the oath prescribed in the twenty eighth section of this chapter, or pay the debt, interest, costs and fees, arising in said execution, or deliver himself into the custody of the keeper of the jail, into which he is liable to be committed under the said execution, he shall be released from his said arrest or imprisonment.

Application to a justice, by a debtor under bond, or imprisoned, for privilege of the poor debtor's oath.  
1835, 195, § 9.  
1839, 412, § 1.  
15 Maine, 33, 337.

**SECT. 21.** Any debtor on any judgment, who has given bond, pursuant to the provisions of the seventeenth and twentieth sections of this chapter, within the times limited by such bonds respectively, and any person, being in prison by force of any execution in a civil suit, may make application in writing to any justice of the peace of the county, in which he is arrested or imprisoned, claiming to have the privilege and benefit of the oath authorized by the twenty eighth section hereof, or if the said debtor be imprisoned, the keeper of the jail, shall, if requested by the debtor, make such application in his behalf.

Justice to appoint the place, and cite the creditor.  
1835, 195, § 9.  
1839, 412, § 1.  
3 Pick. 404.

**SECT. 22.** The justice shall thereupon appoint a time and place for the examination of the debtor, and shall give notice thereof to the creditor, by a citation under his hand and seal, which notification shall be served and returned by any officer, who is qualified to serve any civil process between the same parties.

Citation, how served.  
1835, 195, § 9.  
11 Pick. 487.

**SECT. 23.** The notification shall be served on the creditor by reading it to him, or by leaving an attested copy thereof at his last and usual place of abode, fifteen days at least before the time appointed for the examination, if the creditor be alive and within the state; otherwise, it shall be served in like manner on the person who was his attorney in the suit, the executor or administrator of a deceased creditor, or some known authorized agent; and, if no

such representative can be found in the state, a copy of the notification shall be left in like time with the clerk of the court or justice of the peace, from whom the execution issued. CHAP. 148.

**SECT. 24.** The examination shall be had before two disinterested justices of the peace and of the quorum for the county, and the justices shall have like power to adjourn, as is provided in section six. Examination before two justices of the quorum. 1835, 195, § 10.

**SECT. 25.** The justices shall examine the notification and return, and, if they deem the same correct, they shall examine the debtor on his oath, concerning his estate and effects, and the disposal thereof, and his ability to pay the debt for which he is committed; and they shall also hear any other legal and pertinent evidence, that may be adduced by the debtor or by the creditor. Mode of examination. 1835, 195, § 10. 3 Pick. 404. 3 Fairf. 415. 16 Maine, 386.

**SECT. 26.** The creditor may, upon such examination, propose to the debtor any interrogatories pertinent to the inquiry, and they shall, if required by the creditor, be proposed and answered in writing, and the answers shall be signed and sworn to by the debtor; and the creditor may have a copy of the interrogatories and answers certified by the justices, on paying therefor the same fees, as for a deposition of the same length. Same subject. 10 Pick. 358.

**SECT. 27.** If, upon such examination, and the hearing of such evidence, the justices shall be satisfied that the debtor's disclosure is true, and shall not discover any thing thereby inconsistent with his taking the oath, set forth in the next section, they may proceed to administer the same accordingly. When the justices shall administer the oath. 1835, 195, § 10.

**SECT. 28.** The oath shall be in the form following, to wit: "I, \_\_\_\_\_, do solemnly swear," (or, "affirm," as the case may be), "that I have not any estate, real or personal, in possession, reversion or remainder, except the goods and estate expressly exempted by statute from attachment and execution, and whatever property I have now disclosed; and, that I have not, since the commencement of this suit, or the time when the debt, or cause of action, or any part thereof, on which this suit was brought, was contracted by me, directly or indirectly sold, loaned, leased, or otherwise disposed of, or conveyed or entrusted to any person or persons, whomsoever, all or any part of the estate, real or personal, whereof I have been the lawful owner or possessor, with any intent or design to secure the same, or to receive or expect any profit, advantage or benefit therefrom, to myself or others, with an intent or design to defraud any of my creditors. So help me God:" (or, "this I do under the pains and penalties of perjury," if the debtor affirms.) Form of the poor debtor's oath. 1835, 195, § 10. 1836, 245, § 7.

**SECT. 29.** Whenever, from the disclosure of any debtor arrested or imprisoned on any execution, it shall appear, that he possesses, or has under his control any bank bills, notes, accounts, bonds or other contracts, or any property, not exempted expressly by statute from attachment, but which cannot be come at to be attached, and if the creditor and debtor cannot agree to apply the same in part or in full discharge of the debt, the debtor may choose one disinterested person, the justices, a second, and the creditor, or, in case of his absence or refusal, the same justices, a third, who shall, under oath, appraise and set off such property, or enough of the same to Certain property disclosed, not liable to attachment, may be appraised off to the creditor. 1839, 412, § 2.

**CHAP. 148.** satisfy the amount of the debt, costs and charges; and the creditor or his attorney, if present, shall have the right to select the property to be so appraised. If the creditor will accept the same, it may be thereupon assigned and delivered by the debtor to the creditor, and applied in satisfaction of his demand, in whole or in part, as the case may be. If any particular article of property thus appraised and set off, and necessary and convenient to be applied in satisfaction of the execution, should exceed the amount or balance due thereon, and not be divisible in its nature, the creditor shall have a right to take the same, on advancing to the debtor the overplus, or securing the same to the satisfaction of the justices.

Creditor may accept it within thirty days.

**SECT. 30.** If the creditor be absent, or shall not then conclude to accept the same as aforesaid, the debtor shall deposit with the justices an assignment in writing to the creditor, of all the property, thus appraised and set off; and the justices shall make a record of such proceedings, and cause the property, so disclosed, to be safely kept and secured, for the term of thirty days thereafter, to be delivered to the creditor with the assignment aforesaid, on his demanding the same within that time. If not so demanded, they shall be returned to the debtor.

Justices' certificate of administration of the oath. 1835, 195, § 10. 2 Fairf. 238.

**SECT. 31.** After the administering of the oath aforesaid to the debtor, and the property disclosed as provided in the two preceding sections shall have been duly secured, the justices aforesaid shall make out, and deliver to the debtor, a certificate under their hands and seals, in the form following, to wit:

“STATE OF MAINE.

\_\_\_\_\_, ss. To the sheriff of the county of \_\_\_\_\_, or his deputy, and to the keeper of the jail at \_\_\_\_\_,” (or, “to any coroner,” or, “constable,” as the case may require.)

“(L. s.) We the subscribers, two disinterested justices of the peace and of the quorum, in and for said county of \_\_\_\_\_, hereby certify that \_\_\_\_\_, a poor debtor, arrested on a certain execution issued by” (here insert the name and style of the court, or of the justice of the peace, and the amount of the judgment and date of the judgment and execution), “and committed to the jail at \_\_\_\_\_ aforesaid,” (or, “enlarged on giving bonds to the creditor,” as the case may be), “hath caused \_\_\_\_\_, the creditor, to be notified, according to law, of his the said debtor's desire of taking the benefit of the one hundred and forty eighth chapter of the revised statutes of this state, entitled, ‘of the relief of poor debtors,’ that in our opinion he is clearly entitled to have the oath, prescribed in the twenty eighth section of said chapter, administered by us, and that we have, after due caution to him, administered said oath to him.

Witness our hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, in the year, 18—. \_\_\_\_\_, { Justices of the peace and \_\_\_\_\_, { of the quorum.”

Effect of such certificate. 1835, 195, § 10.

**SECT. 32.** The said debtor, on delivering the said certificate to the prison keeper or filing it in his office, shall, if imprisoned, be set at liberty, so far as relates to the said execution: and his body shall, forever thereafter, be free from arrest on the same, and on every subsequent execution to be issued on the same judgment, or on any

other judgment founded thereon; except as provided in sections, **CHAP. 148.**  
thirty four, forty seven and forty eight of this chapter.

**SECT. 33.** Whenever any debtor in execution shall disclose before two justices of the peace and of the quorum, as provided in this chapter, any real estate liable to be levied upon by virtue of such execution, the said justices shall give the creditor a certificate thereof, stating therein the names of the parties, and the amount of the execution: and the creditor shall have a lien on said real estate, for thirty days thereafter; provided, he shall file the said certificate with the register of deeds of the county or district, where the real estate lies, within five days from the date of such disclosure: and the register shall make an entry thereof, and proceed in like manner, as is before mentioned in section, twelve.

Preservation of creditor's lien on real estate disclosed.  
1831, 520, § 5.

**SECT. 34.** If the debtor shall, as aforesaid, disclose any personal estate, liable to be levied upon by said execution, the creditor shall also have a lien thereon, or so much thereof, as the justices in their record shall judge to be necessary, for the term of thirty days; and, if the debtor shall transfer, conceal or otherwise dispose of the personal property, so disclosed or designated, within the time aforesaid, or suffer the same to be done, or if he shall refuse to surrender the same on the demand of any proper officer, having an execution on the same judgment, the debtor shall receive no benefit from the certificate described in the thirty first section; and the creditor may recover against the debtor, or any person fraudulently aiding or abetting in the said transfer, concealment or disposal, double the amount due on the said execution, to be recovered in an action on the case; and any execution, on a judgment in such action, shall run against the body of such debtor and other persons so aiding or abetting; provided, however, that the payment of such judgment shall be also a satisfaction of the original debt.

Lien on personal estate disclosed. Consequence, if debtor, or any person, transfer or conceal the same.  
1831, 520, § 5.

**SECT. 35.** Any debtor, who may have given bond on mesne process to his creditor, pursuant to the provisions of the seventeenth section of this chapter, may, after judgment, apply to a justice of the peace of the county in which he was arrested, and the said justice shall issue a notification to the creditor or his agent or attorney, and an examination and disclosure may be had within the times specified in the condition of said bond, before two justices of the peace and of the quorum; and the like proceedings shall be had, and the like consequences shall result therefrom, as herein before provided for the case of a debtor, disclosing after arrest or imprisonment on execution, except as mentioned in the following section.

Proceedings, if debtor have given bond on mesne process.  
1835, 195, § 7.

**SECT. 36.** If, on such examination, the judgment debtor shall not entitle himself, in the opinion of the justices, to the benefit of the oath provided in the twenty eighth section, and, if it shall appear that said debtor, at the time of such examination, has any real or personal estate liable to attachment or levy under execution, or that he has other property, such as is described in the twenty ninth section of this chapter, the said debtor shall by the justices be permitted to go at large, upon the bond given at the time of his arrest, during the thirty days in which the creditor's lien shall exist on the property disclosed; and, during that term, the creditor may

Debtor, in such case, may go at large thirty days, during the lien on the property disclosed.  
1835, 195, § 7.  
1836, 245, § 8.



**CHAP. 148.** arrest the debtor on execution, or enforce his lien on the property disclosed, at his election.

Effect of creditor's election, to arrest on execution, or otherwise.  
1835, 195, § 7.

**SECT. 37.** If the creditor shall make his election to arrest the debtor on the execution within the thirty days, and the proper officer, having the execution, shall return that the debtor is not found, the bond given on mesne process shall be forfeited, and, on judgment thereon, execution shall be awarded to the creditor for the amount of his judgment in the original suit, and interest thereon. If the creditor do not arrest the debtor within that time, the person of the debtor shall be forever discharged from any execution, issued on or founded upon such judgment, unless he shall avoid arrest on the execution as aforesaid.

Bond, taken on execution to be returned therewith, for use of the creditor.  
1836, 245, § 5.

**SECT. 38.** Every officer, serving an execution and taking a bond, as provided in the twentieth section hereof, shall return the bond therewith for the benefit of the creditor, who shall be entitled to receive the same, on filing a copy thereof with the clerk of the court or justice, to whom such execution and bond is returned. The creditor shall also be entitled to receive from the prison keeper any such bond, in his hands, on the like terms.

Amount recoverable thereon, if forfeited.  
1839, 195, § 8.  
15 Maine, 340.  
16 Maine, 353.

**SECT. 39.** If the debtor fail to fulfil the condition of any such bond, the same shall be forfeited, and judgment in any suit on such bond shall be rendered for the amount of the execution and costs, and fees of service, with interest on the same, against all the obligors; and a special judgment shall be also rendered against the said principal debtor for a further sum equal to the interest on the same, at the rate of twenty per cent. by the year, after the breach of the bond.

Persons incompetent as witnesses may take the poor debtor's oath.  
1835, 195, § 10.

**SECT. 40.** No debtor shall be precluded from taking any oath, prescribed in this chapter for his relief, on account of his having been convicted of any crime, or being otherwise disqualified to testify as a witness in judicial proceedings; and nothing herein contained, except as provided in the thirty fourth, forty seventh and forty eighth sections, shall prevent any debtor, who shall fail to obtain his discharge, from obtaining a certificate for that reason, at a future examination for the same debt.

Costs for creditor, if debtor be not discharged.  
1835, 195, § 10.

**SECT. 41.** If any debtor shall fail, in his application for a discharge from arrest or imprisonment, the creditor shall recover his costs, to be taxed as in actions before justices of the peace; and the justices shall award the same, and issue execution accordingly.

Discharge of debtor's body, no discharge of the debt.  
1835, 195, § 12.

**SECT. 42.** No release of any debtor or prisoner, under the provisions of this chapter, shall affect or impair the right of the creditor to his debt or demand; but the same shall remain in full force against the property or estate of the debtor, in the same manner, as if such release had not been given.

### ARTICLE III. GENERAL PROVISIONS AND RULES, APPLICABLE TO CERTAIN SPECIFIED CASES OF ARREST AND IMPRISONMENT.

Bond to be valid, though not taken for the exact amount.

**SECT. 43.** Whenever any officer, holding a debtor under arrest or imprisonment, shall be required to take from him any bond described in this chapter, and, from mistake, accident or misapprehension, shall, in fixing the penalty of such bond, exceed or fall short of the sum required by law, such bond shall, notwithstanding, be

valid, and the officer shall not be responsible to either party to a greater extent than the damage, actually sustained by him thereby. **CHAP. 148.**

**SECT. 44.** Nothing, contained in this chapter, shall impair the right of any person to bail on mesne process. Right to bail not impaired. 1835, 195, § 7.

**SECT. 45.** No suit for the breach of any bond, authorized to be given by this chapter, shall be sustained, unless commenced within one year after the forfeiture; except that the provisions of the twelfth and thirteenth sections of chapter, one hundred and forty six, shall be applicable to suits on such bonds. Limitation of suits on bonds. 1835, 195, § 8. 1 Fairf. 399.

**SECT. 46.** In all cases of disclosure, provided for in this chapter, one of the justices may be selected by the debtor, one by the creditor, his attorney or agent, if the same can conveniently be done, otherwise by the officer having such debtor in charge, or, if he be at large, by the sheriff or any deputy or coroner, who might legally serve the precept on which he was arrested, as the case may be; and such officer may also select, in case the parties, or either of them, decline so to do. In case said justices, so selected, do not agree, they may select a third, and a majority shall decide; and, if said two justices are unable to agree on a third, he may be selected by the officer, as before provided. Manner of selecting the justices to take a disclosure.

**SECT. 47.** Whenever a debtor, authorized or required to disclose on oath by the provisions of this chapter, shall, wilfully, disclose falsely, or withhold or suppress the truth, the creditor may commence against such debtor, whether otherwise criminally prosecuted or not, a special action on the case, particularly alleging the false oath and the fraudulent concealment of such debtor's estate or property, and, on oath before some justice of the peace, may declare his belief of the truth of the allegations in the writ and declaration, and the justice, administering the oath, shall certify the same on the writ; and thereupon the debtor shall be held to bail, or, in default thereof, committed to jail to abide the judgment in the suit. Liability of a debtor, if he disclose falsely. 1835, 195, § 11.

**SECT. 48.** If the creditor prevail in such suit, judgment shall be rendered against such debtor, for double the amount of the debt and charges on the former judgment; and the debtor may be arrested and committed to prison on any execution, issued on the judgment last recovered, without any privilege of release or discharge, except by payment or the consent of the creditor. Same subject. 1835, 195, § 11.

**SECT. 49.** Any person, who shall knowingly aid or assist any debtor or prisoner, in any fraudulent concealment or transfer of his property, to secure the same from creditors, and to prevent the seizure of the same by attachment or levy on execution, shall be answerable, in a special action on the case, to any creditor who may sue for the same, in double the amount of the property, so fraudulently concealed or transferred; not, however, exceeding double the amount of such creditor's just debt or demand. Liability of persons aiding in fraudulent concealment or transfer of property. 1835, 195, § 13.

**SECT. 50.** Any person, arrested or imprisoned by virtue of any warrant for the collection of any public tax, shall be entitled to the privileges of this act, and subject to the obligations of the same in all respects, as if arrested or committed on execution for debt, and for all the purposes of notice and other proceedings, relating to the discharge from arrest or imprisonment of the person taxed, the Persons arrested for taxes entitled to the privileges of this chapter. 1835, 195, § 14. 1836, 245, § 5.

**CHAP. 148.** assessors of the town, plantation or parish, by whom such warrant was issued, shall be regarded as the creditors.

Variation of form of the oath, in such case.  
1835, 195, § 14.  
1836, 245, § 5.

**SECT. 51.** In case of the taking of the oath, set forth in the twenty eighth section of this chapter, the same may be varied by substituting for the words, "commencement of the suit," or, "the time when the debt or cause of action, or any part thereof, on which this suit was brought was contracted by me," the following, "assessment of the tax for which I have been arrested," and for the words, "any of my creditors," the following, "any town, plantation or parish."

Change of the form of the certificate.  
1835, 195, § 14.

**SECT. 52.** In such case the certificate of discharge shall be varied by substituting the words, "a warrant for taxes," for "execution," and, "assessors," for "creditors."

Privileges extended to collectors and other officers arrested for taxes committed to them.  
1836, 245, § 6.

**SECT. 53.** Whenever any constable, collector, or deputy sheriff, shall be arrested, or committed to jail, for default on account of any taxes committed to him to collect, such constable, collector or deputy sheriff, shall be subject to the provisions of this chapter, and have the privileges thereof; and, in all proceedings under the same, the assessors of the town, plantation or parish, assessing such taxes, shall be deemed the creditors, and corresponding verbal alterations shall be made in the oath and certificate, mentioned in the twenty eighth and thirty first sections.

Disabilities of persons committed for wilful trespass.  
1833, 51.

**SECT. 54.** Whenever, in pursuance of the provisions of the one hundred and ninth section of chapter, one hundred and fifteen, in the trial of any action of trespass upon property, any court or jury, or justice of the peace, shall have determined that such trespass was committed wilfully, and the court or justice shall have made a record of the fact, and the same shall have been noted on the margin of any execution on such judgment, and, if the judgment debtor be thereupon arrested, he shall be committed to prison, and shall not be entitled to give any of the bonds, provided in this chapter for the liberation of his person; and, in case such person shall apply to take the oath described in the twenty eighth section, no notice shall be issued to the creditor, until at least thirty days after the commitment of the debtor.

Service of a citation on a corporation, creditor.

**SECT. 55.** Whenever, in any proceeding, under this chapter, for the relief of any debtor, the creditor shall be a corporation aggregate, the notification to be issued thereon may be served upon any individual, upon whom service of any original writ or summons may be made, pursuant to sections, forty two and forty three, of chapter, one hundred and fourteen, or upon the attorney of the corporation in the suit; provided, that it shall not be necessary to extend the time of notice beyond the terms mentioned herein.

Prison keeper may require the creditor to support the debtor. Special provision, if committed on several precepts.  
1835, 195, § 15.  
1840, 58.  
2 Pick. 439.  
3 Pick. 259.  
7 Pick. 216.

**SECT. 56.** Whenever any person shall be committed to prison, on mesne process or on execution, the keeper of the prison, if he see cause, may require of the creditor, his agent or attorney, security for the payment of the expense of supporting such debtor, in case he shall claim relief as a pauper; and, unless within eight days after such request, security be furnished, satisfactory to the keeper, or money paid in advance from time to time, so far as necessary for the support of such debtor, the keeper may release him from his confinement: provided, that whenever any debtor

shall stand committed on more than one execution at the same time, the keeper shall be entitled to receive pay for board, only on the first execution, and such board shall be paid for, equally by all the creditors, on whose executions such debtor may be committed; and the creditor, first committing, shall have a several right of action against the other committing creditors for their proportion of such board; and, if any debtor, standing committed on several executions, shall be discharged on the first of them, the jailer shall give a new notice to the creditor on whose execution the debtor may have been next committed, of his liability to pay for the support of such debtor, in like manner as on the first execution.

**SECT. 57.** In case of any dispute about the price of any articles, furnished a prisoner confined for debt, the county commissioners may determine the same, not however in any case exceeding the amount per week, specified in the thirty fourth section of chapter, thirty two.

Adjustment of price of articles furnished to a prisoner. 1835, 195, § 15.

**SECT. 58.** Whenever notice shall be given by any jailer, under the fifty fifth section of this chapter, to the creditors, or by any debtor to his creditors, of any intended disclosures, under the provisions of this chapter, in order to be released or protected from arrest or imprisonment, and there be more than one creditor in the same suit, such notice given to any one of such creditors, being within the state, shall be deemed sufficient for all.

Citation to one of several joint creditors, to hear disclosure, sufficient.

**SECT. 59.** Any creditor, who may have caused his debtor to be arrested or imprisoned on execution, may discharge him from such arrest or imprisonment, by giving to the officer making the arrest, or by leaving with the keeper of the prison, a written permission for such debtor to go at large; and such discharge shall not operate to release the goods and estate of the debtor, from the debt and costs due, but the body of such debtor shall be forever exempted from arrest or imprisonment on such execution, or any future process or suit, founded upon the same judgment.

Effect of voluntary release by creditor from arrest on execution. 1822, 209, § 27. 1828, 410, § 3.

**SECT. 60.** If the body of any person, arrested or imprisoned on execution, shall be released in any of the modes authorized by this chapter, the officer having such debtor in custody shall, at any time on the request of the creditor after such release, indorse upon the said execution a certificate of the fact of such release, and the cause thereof; and, if the day of the return of such execution have not arrived, the same may, notwithstanding such release, be levied on the goods and estate of the debtor; and, if the return day be passed, the same may also be renewed like other executions with the exception of the authority to levy the same upon the body of the released debtor.

Officer may indorse such release on the execution, and then proceed to levy the same on property. 1828, 410, § 3.

**SECT. 61.** Whether such indorsement be made on the executions or not, the judgment, on which the same was issued, may be revived or continued in force with the said exception, by an action of debt, or on scire facias to be brought, as in other cases of judgment.

How judgment may be kept in force, after such release.

**SECT. 62.** The judge of any municipal or police court within his county shall have the same powers, and be subject to the like duties and obligations, under this chapter, as any justice of the peace and quorum in the same county.

Judges of municipal and police courts may act as justices of the peace and quorum. 1836, 245, § 10.

## CHAP. 148.

## ARTICLE IV. SPECIAL PROVISIONS, RELATING TO DEBTORS TO THE STATE.

Such debtor may apply to the judge of the district court. 1830, 458, § 1, 2.

SECT. 63. Any person, committed to jail in any county in this state on any execution, warrant of distress, or any other final civil process for a debt, penalty or costs due to the state, may make application in writing to the judge of the district court, having jurisdiction in said county, for relief, whether the said court shall be in session or not; and it shall be the duty of the said judge on such application to appoint a convenient time and place to inquire into the circumstances of the petitioner.

Notice of hearing to be given to the county attorney, or attorney general. 1830, 458, § 1.

SECT. 64. Previously to proceeding in the hearing of such petition, the said judge shall give notice, in such mode as he may think proper, of the pendency of such application, to the county attorney for the county in which the commitment shall have been made, or to the attorney general; and it shall be the duty of such attorney to attend the hearing in behalf of the state.

Proceedings, and power to release such debts. 1830, 458, § 1, 2.

SECT. 65. The said judge shall consider all such proper evidence, as may be offered on either side, and, if he think proper, may require the oath of the petitioner to all or any of the facts by him stated; and, if he shall be satisfied that the prisoner is unable to pay any part of the amount due on the process, on which he is committed, he may order his discharge from imprisonment, having first administered to him, if he think proper, an oath substantially in the form of the oath, prescribed by the twenty eighth section of this chapter.

Judge may discharge him, or discharge the debt, on payment or security for a part. 1830, 458, § 1.

SECT. 66. If, on such examination, it shall appear to such judge that such prisoner is able to pay only a part of the amount due on such process, the said judge shall order his release from imprisonment; and, if he think it more for the interest of the state, may order the whole debt to be discharged, upon his paying or securing such sum of money, or assigning to the state such securities or other property, at such time and in such manner, and to be deposited with such public officer, as the judge shall direct.

Jailer to comply with the decision of the judge. 1830, 458, § 1.

SECT. 67. The prison keeper having charge of such debtor, shall be thereupon authorized to release him from confinement, or to give him a full discharge from the demand, on such terms, as the judge shall have prescribed.

Adjudication to be entered on the record. 1830, 458, § 3.

SECT. 68. If such proceedings be had at any time, when the district court shall not be in session for such county, the judge shall cause his adjudication and discharge, to be entered of record, as of the last preceding term of the court in the said county.

Same powers vested in the county commissioners.

SECT. 69. The courts of county commissioners in their respective counties, at a regular session, or a majority thereof, in vacation, may exercise the same powers, and their proceedings shall have the like effect, on application made to them, as is provided in the six preceding sections, in reference to the judge of any district court.

Application by such debtor to take the poor debtor's oath, and citation to the county attorney. 1830, 458, § 4.

SECT. 70. Any person committed on execution, as mentioned in the sixty third section, who may be desirous of taking the oath as prescribed in the twenty eighth section, may make application to the jailer having him in custody, and such jailer shall apply in writing to a justice of the peace in his behalf, and the said justice

shall thereupon issue a notification, as prescribed in the twenty second section, directed to the county attorney of the county for which the commitment is made; and the said notification shall be served and returned, and proceedings thereupon may be had, in the same manner and with the like effect, as in cases where notice is served on individual creditors or their attorneys. CHAP. 148.

**SECT. 71.** It shall be the duty of the said county attorney, on such notice, to attend by himself, or some competent substitute, at the time and place specified in the said notification, as attorney for the state. Duty of county attorney to attend. 1830, 458, § 4.

**SECT. 72.** Upon such examination, the justices of the peace and of the quorum, before whom the debtor shall thus appear, may, if they see cause, administer to him an oath, substantially like that prescribed in the twenty eighth section, with proper verbal alterations to conform to the case, and may grant a similar certificate of discharge, which shall have a like effect, as in the cases before mentioned. Oaths, and certificates in such cases. 1830, 458, § 4.

TITLE ELEVENTH.

Of duties payable by certain public officers; their compensation; and of costs in civil and criminal cases; and the collection and disposal of fines and costs.

CHAPTER 149. Of the duties payable by public officers.

- 150. Of the salaries of public officers, and the expenses of the members of the state government.
151. Of the regulation of fees, and of costs in certain cases.
152. Of the taxation of costs, and the collection and disposal of fines and costs in criminal prosecutions.

CHAPTER 149.

OF THE DUTIES PAYABLE BY PUBLIC OFFICERS.

- SECT. 1. Duties payable to state, or county treasurer, on commissions.
SECT. 2. How county treasurers shall account for them.
SECT. 3. Duty payable by attorneys at law to county treasurers.
SECT. 4. Duty payable by inspectors of fish to treasurers of towns.

Duty payable to state, or county treasurers, on commissions 1820, 102, § 1, 2. 1821, 103. 1825, 286, § 1. Sheriffs.

Clerks of courts.

County attorneys. Judges of probate. Registers of probate. Inspectors general. Justices.

How county treasurers shall account for them. 1820, 102, § 3.

Duty payable by attorneys at law to county treasurers. 1822, 192, § 1.

Duty payable by inspectors of fish to treasurers of towns. 1821, 150, § 18.

SECTION 1. No person, appointed to either of the offices, specified in this section, shall be entitled to receive his commission, until he shall have paid to the treasurer, either of the state or of his county, the sum hereby designated to be paid for such commission, that is to say :

Sheriffs of the counties of York, Cumberland, Lincoln, Kennebec and Penobscot, respectively, fifty dollars, and of all other counties, twenty five dollars each ;

Clerks of the judicial courts for the counties of York, Cumberland, Lincoln, Kennebec and Penobscot, forty dollars, and for other counties, twenty five dollars each ;

County attorneys, five dollars each ;

Judges of probate, seven dollars each ;

Registers of probate, ten dollars each ;

Inspectors general, excepting inspectors of hops, and of butter and lard, twenty dollars each ;

Justices of the peace, five dollars each.

SECT. 2. Every county treasurer, whenever he shall render his accounts to the state, shall specify all sums received by him for duties, under the foregoing section, together with the name of the individual, and office for which the same was paid.

SECT. 3. No person shall be admitted as an attorney in any district court, until he shall have paid to the treasurer of the county, where he is admitted, the sum of twenty dollars, and shall produce his receipt therefor to the court.

SECT. 4. Every inspector of fish shall, on being qualified for such office, pay to the treasurer of the town or plantation in which he shall reside, five dollars ; and every such treasurer shall pay over all moneys, so received, to the treasurer of the state, on or before the twentieth day of January annually.

**CHAPTER 150.**

**CHAP. 150.**

**THE SALARIES OF PUBLIC OFFICERS; AND EXPENSES OF THE MEMBERS OF THE STATE GOVERNMENT.**

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| <p><b>ART. 1.</b> Salaries payable at the state treasury. Also at the county treasury.</p> <p><b>2.</b> Other emoluments, pertaining to certain of the same offices.</p> <p><b>3.</b> Amount of fees, which may be retained by clerks of the judicial courts.</p> <p><b>4.</b> Compensation of counselors, senators and representatives, secretary of the senate and clerk of the house of representatives.</p> | <p><b>SECT. 5.</b> Inability or neglect of the register of probate, to be certified by the judge, to the county treasurer.</p> <p><b>6.</b> Register pro tem. to receive a proportional part of the salary.</p> <p><b>7.</b> County to provide books for records and blanks. Register to furnish stationery and incidentals.</p> |
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**SECTION 1.** The following public officers shall be entitled to receive salaries, in quarterly payments, on the first day of January, April, July and October of each year, at the following annual rates, at is to say:

- From the treasury of the state:**
- Governor, fifteen hundred dollars;
  - Treasurer of the state, nine hundred dollars;
  - Secretary of state, nine hundred dollars;
  - Adjutant general, seven hundred dollars;
  - Land agent, one thousand dollars;
  - Warden of the state prison, seven hundred dollars;
  - Judges of the supreme judicial court, each, eighteen hundred dollars;
  - Judges of the district courts, each, twelve hundred dollars;
  - Attorney general, one thousand dollars;
  - Reporter of the decisions of the supreme judicial court, six hundred dollars;
  - County attorneys, in the respective counties of
    - York, two hundred and fifty dollars,
    - Cumberland, four hundred dollars,
    - Lincoln, two hundred and seventy five dollars,
    - Oxford, one hundred and fifty dollars,
    - Kennebec, three hundred dollars,
    - Somerset, two hundred dollars,
    - Penobscot, four hundred dollars,
    - Hancock, one hundred and fifty dollars,
    - Washington, two hundred dollars,
    - Waldo, one hundred and fifty dollars,
    - Franklin, one hundred dollars,
    - Piscataquis, one hundred dollars,
    - Aroostook, one hundred dollars.

Salaries payable at the state treasury.

1820, 106, § 1.  
 1820, 54, § 10.  
 1824, 274, § 1.  
 1836, 244, § 1.  
 1824, 232, § 23.  
 1834, 97, § 1.  
 1836, 236, § 1.  
 1839, 373, § 10.  
 1822, 205.  
 1839, 408, § 1.

- And from the treasurer of their respective counties:**
- Judges of probate in the counties of
    - York, three hundred dollars,
    - Cumberland, four hundred dollars,
    - Lincoln, three hundred dollars,
    - Kennebec, three hundred dollars,
    - Hancock, two hundred and twenty five dollars,

Also at the county treasury.

1826, 343, § 1.  
 1834, 93, § 1.  
 1828, 395, § 1, 2.  
 1837, 255.  
 1836, 224.  
 1837, 254.  
 1834, 120.  
 1839, 383, 393, § 1.



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1840, 3, § 3.  
1835, 186, § 1, 2.

Oxford, two hundred dollars,  
Somerset, one hundred and fifty dollars,  
Washington, two hundred and fifty dollars,  
Penobscot, two hundred and seventy five dollars,  
Waldo, one hundred and fifty dollars,  
Franklin, one hundred dollars,  
Piscataquis, sixty dollars,  
Aroostook, fifty dollars ;

Registers of probate in the counties of  
York, five hundred and fifty dollars,  
Cumberland, nine hundred dollars,  
Lincoln, five hundred dollars,  
Oxford, three hundred and fifty dollars,  
Kennebec, five hundred and fifty dollars,  
Somerset, three hundred dollars,  
Penobscot, five hundred and fifty dollars,  
Hancock, three hundred dollars,  
Washington, four hundred dollars,  
Waldo, three hundred dollars,  
Franklin, one hundred and fifty dollars,  
Piscataquis, one hundred and twenty five dollars,  
Aroostook, one hundred dollars ;

Judge of the municipal court in Portland, in the county of Cumberland, seven hundred dollars ;

Recorder of the same court, four hundred dollars.

Other emolument, pertaining to certain of the same offices.  
1837, 302.  
1824, 232, § 23.

SECT. 2. The foregoing salaries shall be in full of all fees and emoluments, pertaining to such offices, excepting as follows :

*First.* The secretary of state shall be entitled to retain such fees, as may be received in his office for special services ;

*Second.* The warden of the state prison shall have the exclusive use and occupation of such part of the keeper's house and buildings in Thomaston, belonging to the state, appurtenant to said prison and yard, as the governor and council may direct, and the free use of store rooms, and fuel for his use, which shall be furnished by the prison without charge ;

1820, 54, § 10.

*Third.* The reporter of the decisions of the supreme judicial court may retain, to his own use, the profits arising from the publication of his reports ;

1826, 343, § 3.

*Fourth.* The register of probate shall be entitled to fees for all copies of papers, by him furnished by request, excepting one of each of the following papers, to be furnished by him, when demanded, to executors, administrators, guardians, trustees, widows, heirs or other parties, principally interested, to wit : all wills proved, inventories returned and accounts settled, partitions of real estate and assignment of dower, and all other orders and decrees of the court of probate.

Amount of fees, which may be retained by clerks of the judicial courts.  
1820, 90, § 2.

SECT. 3. The clerks of the judicial courts, when they render to the treasurers of their respective counties, their account of fees which have accrued to them, as provided in the sixth section of chapter, one hundred, may severally retain one thousand dollars, if so much shall have accrued to them, during the year preceding, and in the same proportion for any time less than one year ; and in

addition, one half of all the fees of office to them respectively accrued, over that sum or proportional part thereof, as their salaries. **CHAP. 150.**

**SECT. 4.** Each member of the council, senate, and house of representatives, shall be allowed and paid for his services, two dollars for every day he shall have attended, and two dollars for every ten miles' travel from his place of abode, at each session. The president of the senate and speaker of the house of representatives, in addition to their pay as members, shall each be entitled to two dollars for every day's attendance. To the secretary of the senate, and clerk of the house of representatives, there shall be allowed and paid three dollars, each; and to their respective assistants, two dollars each, for every day, they may be employed as such. Pay rolls shall be made up in conformity to these provisions, and paid out of the treasury of the state.

Compensation of counselors, senators and representatives, secretary of the senate and clerk of the house of representatives. 1823, 216. 1824, 273, § 1.

**SECT. 5.** Whenever the register of probate shall be unable from sickness, or shall, from any other cause, neglect to do the duties of his office, the judge of probate for the same county shall certify, to the county treasurer, the fact of such inability or neglect, and the time of its commencement and termination; and what person has performed the duties of register in the mean time.

Inability or neglect of the register of probate, to be certified by the judge, to the county treasurer. 1830, 483, § 1.

**SECT. 6.** The county treasurer shall not pay to the said register any portion of the salary, that may accrue from the time when it thus appears he ceased to perform his duties, but the same shall be paid to the person certified, as aforesaid, to have performed said duties, until the register shall resume the same, or a new register shall be appointed.

Register pro tem. to receive a proportional part of the salary. 1830, 483.

**SECT. 7.** Each county shall provide all books necessary for keeping the records in the registry of probate and all necessary printed blanks; but all other stationery, and all the incidental expenses of the office shall be considered, as provided by the salary of the register.

County to provide books for records and blanks. Register to furnish stationery and incidentals. 1826, 343, § 4.

## CHAPTER 151.

### OF THE REGULATION OF FEES AND OF COSTS IN CERTAIN CASES.

- SECT. 1.** Fees of justices of the peace.
2. Judges of municipal and police courts.
  3. Clerks of the judicial courts. District court. Supreme judicial court. Court of county commissioners.
  4. Sheriffs and their deputies.
  5. Coroners, for similar services.
  6. Costs of inquests on dead bodies.
  7. Fees of constables.
  8. Jailers.
  9. County commissioners.
  10. Jurors.
  11. Duty on jury trials, to be paid to the clerk.

- SECT. 12.** Fees of witnesses.
13. Allowance to parties and attorneys, in civil causes. Costs in actions, brought to the higher courts, which a justice of the peace might try.
  14. Costs taxable, for the state, in criminal prosecutions.
  15. Of probate fees.
  16. Expenses of partition, or assignment of dower, in probate court, to be paid by parties; except when the judge may require executors, &c. to pay.
  17. Fees of the secretary of state.
  18. Register of deeds.

- CHAP. 151.** **SECT. 19.** Fees for solemnization of marriages.
20. Fees of town clerks.
21. Fees of inspectors, weighers, measurers and surveyors: Fish; clams; beef and pork; butter and lard; hops; tobacco; onions; pot and pearl ashes; lime; lumber; mill logs; firewood and bark; weights and measures; and fire arms.
22. Inspectors may require returns from their deputies, under oath.
23. What constitutes a page. Fees for copying and annexing certificates, in general cases.
- SECT. 24.** On appeals to higher courts; original papers to be carried up.
25. Of fees, not expressly provided for.
26. Fee tables, to be exposed to view, in offices.
27. Account of items, in writing, may be required by party paying. Penalty.
28. Penalty for overcharging costs on justico writs, by attorneys or others.

The fees, chargeable by public officers, for the services hereinafter mentioned, and the costs, taxable in civil suits and criminal prosecutions, shall be as provided in this chapter.

#### FEES OF JUSTICES OF THE PEACE.

Fees of justices of the peace. 1821, 105, § 1. 1835, 178, § 7.

**SECTION 1.** For every blank writ of attachment and summons thereon, or original summons, ten cents.

For every subpoena, for one or more witnesses, ten cents.

For the entry of an action or filing a complaint in civil causes, including filing of papers, swearing of witnesses, examining, allowing and taxing the bill of costs, and entering up judgment, and recording the same, thirty cents.

For the trial of an issue, eighty cents.

For a copy of a record or other paper, at the rate of twelve cents, a page.

For a writ of execution, fifteen cents.

For a recognizance to prosecute an appeal, including principal and surety, twenty cents.

For taking a deposition, affidavit, or disclosure of a trustee, in any cause not pending before himself, twenty cents; for writing the same with the caption, and for the notifications to the parties and witnesses, at the rate of twelve cents, a page: the justice, who shall take such affidavit, deposition or disclosure, shall certify the fees of himself, of the witnesses or party disclosing, and of the officer serving the notifications.

For taking a deposition in perpetual memory of the thing, the same fees to each justice, as in taking other depositions.

Administering an oath in all cases, except on a trial or examination before himself, and to qualify town or parish officers, and a certificate thereof, twenty cents, whether administered to one or more persons, at the same time.

Taking the acknowledgment of a deed, with one or more seals, provided it be done at one and the same time, and certifying the same, seventeen cents.

Granting a warrant of appraisement in any case, and swearing appraisers, thirty two cents.

For receiving a complaint, and issuing a warrant in criminal cases, fifty cents.

For entering a complaint in a criminal prosecution, swearing wit-

nesses, rendering judgment and recording the same, examining, allowing and taxing the costs, and filing the papers, seventy five cents. CHAP. 151.

Recognizing persons charged with crimes, for their appearance at the district court, or at the supreme judicial court, and for certifying and returning the same, with or without sureties, twenty five cents, to be paid by the person so recognizing.

For a mittimus for the commitment of any person, on a criminal accusation, twenty five cents.

In case of a bastardy process, the fees may be charged, as for like services in a criminal prosecution.

Recognizance of debt and recording, forty two cents.

Drawing a rule for submission to referees, and acknowledging the same, thirty three cents.

Writ to remove a nuisance, thirty three cents.

Calling a meeting of any corporation, fifty cents.

For an examination of a debtor, under the laws for the relief of poor debtors, fifty cents ; for interrogatories proposed by the creditor or his attorney and answers, to be paid by the creditor, twelve cents, a page. 1835, 195, § 16.

For travel on any official duty, at the rate of fifty cents, for every ten miles, in going and returning.

And, in all cases, where the attendance of two or more justices is required, each of them shall be entitled to the fees, prescribed for all services rendered by him personally.

SECT. 2. Except when otherwise expressly provided, the fees of the judge of any municipal or police court, whether in civil or criminal proceedings, shall be taxed in the same manner, and at the same rate, as the fees of justices of the peace, so far as applicable. Judges of municipal and police courts. District court. 1825, 294, § 4.

Whenever any such judge shall receive a stated salary for his services, from the treasury of the county, he shall account under oath to the treasurer of said county, for all fees accruing to him in said capacity, towards his salary ; and if such fees exceed the amount of his salary for any such quarter, the excess shall be by him paid over to such treasurer.

SECT. 3. FEES OF THE CLERKS OF THE JUDICIAL COURTS.

*First.* For services, as clerks of the district courts :

For every blank writ of attachment with a summons, or of scire facias, or an original summons, four cents ; Clerks of the judicial courts. District court. 1821, 105, § 1.

For the entry of every action, entering up and recording the judgment, whether on a verdict, demurrer, nonsuit or default, sixty cents ; 1835, 182, § 2.

Acknowledging satisfaction of a judgment on the record, eight cents ;

Entering an appeal and recognizing principal and sureties, fifteen cents ;

For copies, twelve cents, a page ;

For continuing each cause to the next term, five cents ;

Entering the surrender of a principal into court by his bail, and making a record thereof, fifteen cents ;

For recording a petition for partition and any order thereon, at the rate of twelve cents, a page ;

**CHAP. 151.** Entry of a rule of court upon the parties submitting a cause to referees, fifteen cents ;

Proving a deed in court, and certifying the same, twenty cents ;

Authenticating the official signature of a magistrate, twenty five cents ;

For an original or other writ of execution in personal matters, and filing the same, when returned, fifteen cents ;

A writ of possession in real actions, twenty five cents ;

A writ of protection or habeas corpus, twenty five cents ;

A subpœna for one or more witnesses, ten cents ; a subpœna, duces tecum, ten cents ;

For each venire facias for jurymen, five cents, to be paid out of the county treasury ;

Opening and filing a deposition, five cents ;

Entering an indictment, presentment, complaint or information, including the recording of the judgment of the court thereon, examining and casting the bill of costs, and filing the papers, sixty five cents ;

Discharging a recognizance, ten cents ;

Each warrant for a criminal, twenty cents ;

Examining and casting the grand jurors' accounts, and order thereon, thirty cents.

Supreme judicial court.  
1835, 182, § 1.

*Second.* For services of clerks of the supreme judicial courts :

The fees to be taxed by the clerk in all actions entered in this court, and also for other services not hereinafter otherwise stated, shall be the same, as is or may be allowed to him, as clerk of the district court :

And for the services enumerated below, his fees shall be as follows :

In an equity case, the court may allow a further sum, not exceeding ten cents, a page, in the whole, for making up the record, to be taxed by the clerk ;

1821, 105, § 1.

A writ of review, seventy five cents ;

A writ of scire facias, forty cents ;

Every writ and seal, other than before mentioned, forty cents ;

Each recognizance, including principal and sureties, twenty cents ;

Recording judgment in every criminal cause, forty cents ;

Entering a discharge of a recognizance by proclamation, fifteen cents.

Court of county commissioners.

*Third.* For services as clerks of the county commissioners :

For a warrant for a county tax, ten cents ;

A warrant to lay out or alter a road, ten cents ;

Recording the reports of highways and other matters by order of the commissioners, and copies of all records or other papers, twelve cents a page ; and

For the entry of a petition, fifty cents.

Sheriffs and their deputies.  
1821, 105, § 1.  
1829, 445, § 1.  
15 Maine, 463.  
6 Pick. 375.

**SECT. 4. FEES OF SHERIFFS AND THEIR DEPUTIES.**

For the service of an original summons or scire facias, either by reading the same or by copy, or for the service of a capias or attachment with summons, on one defendant, twenty five cents ; if served on more than one defendant, then twenty five cents more, for each defendant, upon whom the process is served.

If the sheriff or his deputy, by the written direction of the plain-

tiff, his agent or attorney, shall make a special service of any writ of attachment by attaching property, he shall receive therefor fifty cents, including the summons thereon; or, if by taking the body on a *capias*, he shall be allowed fifty cents, for each defendant on whom such writ shall be so served. CHAP. 151.

Where the officer is by law directed to leave a copy, in order to complete the service, or shall give a copy of any precept upon demand thereof, he may charge at the rate of twelve cents a page; which, in the latter case, shall be paid by the party demanding the copy.

If real estate is attached, the officer may tax and receive fifteen cents, for leaving with the register of deeds an attested copy of his return and other particulars, as required in section, thirty two, of chapter, one hundred and fourteen; and, in lieu of travel, such postage as is legally chargeable from the post office nearest the residence of the officer; and he shall pay the register ten cents, and tax the same with his own fees. 1838, 344, § 2.

For a bail bond and writing the same, including principal and sureties, to be paid by the person admitted to bail, and taxed for him, if he should prevail, twenty cents.

For the service of a subpoena, notice to an adverse party, or other process, in which there is no command to make return thereof, twenty five cents, and, if by copy, at the rate of twelve cents a page for the copy; also the officer may charge, for his actual necessary travel, at the rate of four cents a mile, the usual way to the place of service, with all sums actually paid by him for boat hire, and crossing any toll bridge or ferry, in making such service; and any such service on an adverse party, by giving him an attested copy of the notice in hand, shall be valid, notwithstanding some other mode of service may have been prescribed. 1836, 228, § 2.

For levying and collecting executions in personal actions: for every dollar of the first one hundred dollars, three cents; for every dollar above one hundred, and not exceeding two hundred dollars, two cents; and for every dollar above two hundred dollars, one cent. 1829, 445, § 1.

For serving a writ of possession, one dollar and ten cents; and, if on more than one piece of land, seventy five cents for each piece of land, after the first; and the fees for levying and collecting the costs shall be the same as above provided for executions in personal actions.

For serving an execution upon a judgment of court for partition of real estate, or assignment of dower, one dollar, a day, and four cents, a mile, from the officer's place of abode, to the place of service.

For causing appraisers to be sworn, and making return of levy on real estate, fifty cents. 1825, 309, § 1.

For each appraiser of real estate, for extending execution or assigning dower, one dollar a day, and travel at the rate of four cents, a mile, going out and returning home; to be paid by the officer and charged in his return. 1821, 105, § 1.

For advertising, to be sold on execution, a right in equity of redeeming mortgaged real estate, in a public newspaper, such sum 1825, 309, § 1.

**CHAP. 151.** as he shall pay to the printer for such advertisement ; and, for writing and posting up notices of the sale of such equity in the town where the land lies, and in two adjoining towns, one dollar ; and, for making out a deed and return of the sale of such equity, one dollar.

1825, 309, § 1. When the estate, right, title or interest of any person, held or claimed in virtue of a possession or improvement, shall be seized on execution and sold, as provided in the twenty ninth section of chapter, one hundred and forty five, or when the franchise or other property of any corporation, or the property of any individual is required to be sold on execution, by a process similar thereto and advertising in like manner, the officer shall be entitled to the like fees and remuneration, as is allowed in the sale of any equity of redemption.

1825, 309, § 1. The fees of the register of deeds, for recording any levy upon real estate, or the deed of the officer for the sale of any real estate on execution, shall be taxed by the officer in his return ; and it shall be the duty of every officer, making a levy on real estate by appraisal, to cause the execution, and his return thereon, to be recorded by the register of deeds of the county where the land lies, within three months after such levy.

For the service of a warrant, the officer shall be entitled to fifty cents.

For each aid, necessarily employed in criminal cases, including expenses, one dollar per day, and in that proportion for a longer or shorter time ; and four cents, a mile, for travel in going out and returning home.

For summoning witnesses in criminal cases, the same, as in civil causes ; unless in special cases, when the court may increase the fees to what they may judge reasonable.

For the officer's attending court and keeping the prisoner in criminal cases, seventy five cents, for every twelve hours, and in that proportion for a greater or less time.

For travel for the service of any writ, warrant, execution or other process, when not otherwise expressly provided by law, four cents a mile ; the travel to be computed from the place of service to the court or place of return, by the usual way ; but, if the distance between those places be more than fifty miles, only one cent, a mile, shall be allowed for all travel exceeding that distance ; only one travel shall be allowed for any one precept ; but, if the same be served on more than one person, the travel may be computed from the place of service, most remote from the place of return, with all further necessary travel in serving such precept.

1829, 445, § 1. For travel across any toll bridge or ferry, actually passed in serving or returning any precept, the sum by law payable at such bridge or ferry, for a man and horse ; for travel by water to, or from any island, or crossing any river where no ferry is established, in making service of a writ or warrant, the court, where the process is returnable, may allow a reasonable charge.

No charge of any such officer for service, travel or expenses paid, shall be allowed, unless the items thereof be expressly stated, and the amount of each.

For distributing venires for jurors, eight cents, each ; treasurer's

warrants, twenty five cents, each ; for proclamations of all kinds, CHAP. 151.  
five cents, each.

For transmitting to the selectmen of towns precepts from the  
governor, for calling special meetings for the elections of represen- 1833, 68, § 6.  
tatives to congress from any district, with copies of the lists of per-  
sons previously voted for, for each town, fifty cents.

For each day's attendance by the sheriff on the supreme judicial 1828, 408, § 1.  
court, or on the district court, three dollars ; to be paid from the  
county treasury.

For every deputy sheriff, when ordered to attend either of said  
courts, one dollar and fifty cents, a day, from the county treasury.

For services under the provisions of chapter, one hundred and 1835, 195, § 16.  
forty eight, as follows : taking a debtor before a justice or justices  
for disclosure, travel, as in service of a writ, and attendance, twenty  
five cents ; for a bail, or other bond, twenty five cents ; and for  
recommitment of a prisoner, when remanded under the provisions of  
the said chapter, twenty five cents ; and no dollarage or commission  
shall be allowed to the officer for an arrest or commitment upon  
execution, or mesne process, under the provisions of chapter, one  
hundred and forty eight, except upon so much money as shall be  
actually collected.

SECT. 5. Coroners shall be entitled to the same fees, as sheriffs, Coroners, for  
similar services. 1821, 105, § 1.  
for similar services, necessary to be performed by them, excepting  
where otherwise expressly provided.

They may receive for attending in court in every trial, where the  
sheriff is concerned, twenty five cents ; and the same for attending  
the jury therein.

SECT. 6. OF INQUESTS ON DEAD BODIES.

The fees, for taking inquests on dead bodies, shall be as follows, Costs of in-  
quests on dead  
bodies. 1821, 105, § 1.  
to be certified in the coroner's return, and paid out of the county  
treasury, viz :

To the coroner for granting a warrant, and taking an inquest on  
one body, one dollar ; if on more than one at the same time, but  
their death being caused by the same means, twenty cents, for each  
body, after the first.

To the jurymen seventy five cents, each, for each day's atten-  
dance, and four cents, a mile, for travel each way.

To the constable for his travel and attendance, and expenses in  
summoning a jury, ninety cents, a day.

SECT. 7. The fees of constables for the service, travel and Fees of consta-  
bles. 1821, 105, § 1.  
return of each venire shall be one dollar and fifty cents, to be paid 1831, 507, § 2.  
out of the county treasury ; and, for services which may be per-  
formed, either by a deputy sheriff or a constable, the constable shall  
be allowed the same fees, as a deputy sheriff, unless otherwise pro-  
vided by law.

SECT. 8. The jailer's fees shall be, on the commitment or dis- Jailers. 1821, 82, § 8.  
charge of a prisoner, twenty cents ; for dieting each prisoner, such 1821, 105, § 1.  
sum weekly, and in such proportion for a longer or shorter period, 1821, 122, § 14.  
as the county commissioners shall judge reasonable, not exceeding  
one dollar, a week, for persons charged with, or convicted of crimes  
against the state, and, in other cases, not exceeding one dollar and  
twenty five cents.



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County commissioners.  
1833, 79, § 5.

Jurors.  
1821, 105, § 2.  
1827, 363.

Duty on jury trials to be paid to the clerk.  
1821, 105, § 2.

Fees of witnesses.  
1821, 105, § 1.  
1830, 470, § 2.  
1835, 178, § 8.  
11 Pick. 241.

Allowance to parties and attorneys in civil causes.  
1821, 105, § 1.  
1835, 165, § 4, 5.  
1838, 336, § 1.

**SECT. 9.** The fees of the county commissioners shall be two dollars and fifty cents per day, for their time, when actually employed, and one dollar for every ten miles' travel, and in the same proportion for a longer or shorter time or distance; subject to the conditions prescribed in the thirteenth section of chapter, ninety nine.

**SECT. 10.** The grand jurors and the jurors for trials, attending at the supreme judicial court or district court, shall each be allowed one dollar and fifty cents, a day, for their attendance, and six cents, a mile, for their travel out and home, to be paid out of the county treasury; and jurors, attending before a sheriff, or on any other occasion prescribed by law, shall be allowed one dollar per day, and four cents, a mile, travel each way.

**SECT. 11.** There shall be paid to the clerk of the supreme judicial court, and of the district court, respectively, by the plaintiff, or appellant, seven dollars for the trial by jury of each civil action, for the use of the county, to be taxed with his costs, if he prevail; and the clerk shall forthwith pay over the same to the county treasurer.

**SECT. 12.** Witnesses, whether in the supreme judicial court, district court, probate court, or before the county commissioners, shall receive one dollar, for each day's attendance, and four cents, for each mile's travel, going out and returning home; and, before a justice of the peace, a judge of a municipal or police court, or referees, auditors or commissioners, specially appointed to take testimony, fifty cents, a day, for attendance, and, for travel, the same, as at the courts aforesaid.

**SECT. 13. ALLOWANCE TO PARTIES AND ATTORNEYS IN CIVIL CAUSES.**

To parties recovering costs in any court, or before a justice of the peace, thirty three cents, for each day's attendance, and the same, for every ten miles' travel.

No plaintiff shall be allowed for more than three days' attendance, when the defendant is defaulted; unless the defendant shall have appeared and made answer to the plaintiff's suit; in which case, if the defendant is defaulted after the expiration of three days, no attendance shall be taxed for the plaintiff, after the day when the default shall happen, and, in no case, for more than six days in all, unless the action shall have been entered on the trial docket, as provided in section, one hundred, of chapter, one hundred and fifteen; and then, not exceeding ten days' attendance, in each term.

Costs for travel shall be taxed in all cases, according to the distance of the plaintiff, or his attorney, whichever may be nearest to the place of trial; and, when the action shall be in the name of an indorsee, such costs for travel shall be taxed according to the distance of the attorney, payee or indorsee, whichever shall be nearest to the place of trial; provided, that no costs for travel shall be allowed for more than ten miles, distance from any justice, municipal or police court, nor for more than forty miles, distance from any other court, unless the plaintiff, recovering costs, shall actually travel a greater distance, or the adverse party, if he recover costs, shall, by himself or his agent or attorney, travel in fact a greater distance for the special purpose of attending court in such cause.

For a power of attorney, fifty cents; and for the plaintiff's declaration, fifty cents, if in the supreme judicial court or district court; but no fee for a power shall be taxed before any justice of the peace. CHAP. 151.

For an issue in law or fact, there shall be allowed for an attorney's fee, two dollars and fifty cents, if in the supreme judicial court, and one dollar and fifty cents, if in the district court.

If, in any action originally brought before the supreme judicial court or any district court, it shall appear on the rendition of judgment, that the action should have been originally brought before a justice of the peace or the judge of any municipal or police court, the plaintiff shall not be entitled to recover, for costs, more than one quarter of the amount of the debt or damage, so recovered; provided, that on any report of referees full costs may be taxed for the prevailing party, unless the report otherwise provide. Costs in actions brought in the higher courts, which a justice of the peace might try. 1821, 59, § 30. 8 Greenl. 106, 138.

**SECT. 14. COSTS TAXABLE FOR THE STATE, IN CRIMINAL PROSECUTIONS.**

For the attorney acting for the state, in all cases in the supreme judicial court or in any district court, one dollar and twenty five cents, unless there be a trial by jury or an issue in law, at the supreme judicial court, in which case there shall be an additional charge of one dollar. Costs taxable for the state, in criminal prosecutions. 1821, 105, § 1.

For the indictment, in the supreme judicial court, one dollar and twenty five cents, and in any district court sixty five cents.

For attendance, thirty three cents a day, not to extend beyond the second week of any one term; but no fees for travel shall be allowed in any case, in which the state is a party. 1836, 248, § 1.

No attendance shall be taxed, in cases of defaulted recognizances, other than what is taxed in the prosecutions in which they are taken, until the return of a writ of scire facias issued thereon.

In all indictments against towns for neglecting to make or repair any way, not tried by the jury, the fees taxed for the state shall be limited to three dollars; and the costs shall not be taxed until the action is finally disposed of. 1836, 216, § 2. 1839, 409.

**SECT. 15. OF PROBATE FEES.**

The register shall receive for such copies as are taxable by law, twelve cents, a page. He shall demand no fee for taking from the file of his office or transporting to the place of the sitting of the probate court, such papers as are necessary in the settlement of any estate, or account in said court. Of probate fees. 1821, 105, § 1.

To executors, administrators, guardians and trustees, one dollar for every ten miles' travel, to and from the court, and one dollar, for each day's attendance; and a commission, at the discretion of the judge of probate, whether the account shall be settled at one or more times, not exceeding five per cent. on the amount of personal assets, that may come to their hands; having regard to the nature, liability and difficulty, attending their respective trusts. In cases, where legal counsel is necessary, a reasonable sum for professional aid shall be allowed at the discretion of the judge. 1830, 470, § 2.

To appraisers on estates, and to commissioners for receiving claims against insolvent estates, and to commissioners appointed to make division of estates, and for assigning and setting out a widow's

**CHAP. 151.** dower, not exceeding two dollars a day for the time actually employed, including travel and expenses.

The fees to subscribing witnesses to wills, and appraisers of estates, shall be paid by the executors, administrators, trustees or guardians, respectively, and allowed in the settlement of their accounts.

Expenses of partition, or assignment of dower in probate court, to be paid by parties; except when the judge may require executor, &c. to pay. 1821, 51, § 37. 1830, 470, § 2.

**SECT. 16.** When any partition of real estate or assignment of dower shall be made, by order of any judge of probate, the expenses thereof shall be paid by the respective parties interested in said estate, in proportion to their interest; excepting that, when such expenses accrue prior to the closing of the final account of any executor or administrator of the deceased owner of any such real estate, having in his hands sufficient personal assets for the purpose, the judge of probate, if he see fit, may order the same to be paid by such executor or administrator, and allow the same in his account; provided as follows:

An account of said charges shall first be exhibited to said judge and allowed by him, after due notice and hearing of all parties interested therein.

In case of neglect or refusal of any person, liable to pay such expenses of partition and assignment of dower, the judge of probate may issue a warrant of distress against such delinquent, for the amount due from him, and the costs of the process.

Fees of the secretary of state. 1821, 105, § 1.

**SECT. 17. FEES OF THE SECRETARY OF STATE.**

For a certificate under the seal of the state, one dollar; and for all copies, at the rate of twelve cents a page; provided, such certificate or copies be for the benefit of particular persons.

Register of deeds. 1821, 105, § 1.

**SECT. 18. FEES OF THE REGISTER OF DEEDS.**

For entering and recording a deed or other paper, twelve cents, a page.

For certifying on the original the time when, and book and page where, the same is recorded, five cents.

The above fees are to be paid when the instrument is offered to be recorded.

For all copies, at the rate of twelve cents, a page.

1838, 344, § 3.

For entering in the margin a discharge of the mortgage, to be signed by the person discharging the same, twelve cents.

For receiving of an officer, a copy of any return of attachment of real estate, minuting on the same, the time when it is received, keeping the same on file for the inspection of those, who may be interested, and entering the same in a book to be kept by the register for the purpose, ten cents.

Fees for solemnization of marriages. 1821, 105, § 1.

**SECT. 19.** Every ordained minister, or justice of the peace, who shall lawfully solemnize a marriage and certify the same, shall be entitled to receive therefor, one dollar and twenty five cents.

Fees of town clerks. 1821, 105, § 1.

**SECT. 20. FEES OF TOWN CLERKS.**

For publishing the banns of matrimony, recording the same, giving a certificate of the publishment and recording the marriage on receiving the minister's or justice's certificate thereof, fifty cents; to be paid on issuing a certificate of the publishment.

For recording births and deaths, eight cents each.

For a certificate of a birth or death, ten cents.

SECT. 21. FEES OF INSPECTORS AND THEIR DEPUTIES, WEIGH-  
ERS, MEASURERS AND SURVEYORS. CHAP. 151.

*Of fish.*

For each certificate of exportation, seventeen cents; for inspecting and branding each tierce, ten cents; each barrel, seven cents; each box of smoked herrings or alewives, two cents; exclusive of the labor and expense of coopering: all which shall be paid by the seller.

Fees of inspectors, weighers, measurers and surveyors.

Fish.  
1821, 150, § 19.

*Of clams.*

For inspecting and branding each barrel, ten cents, and each half barrel, six cents, exclusive of the labor and expense of packing and coopering; the fees for inspecting and branding to be paid by the purchaser, and for packing and coopering, by the seller.

Clams.  
1839, 379, § 6.

*Of beef and pork.*

For each barrel, inspecting and branding, twelve and a half cents; cutting, weighing and packing, ten cents; and for coopering, ten cents.

Beef and pork.  
1822, 208, § 1.  
1823, 239, § 1.

For each half barrel, inspecting and branding, eight cents; cutting, weighing and packing, seven cents; and for coopering, seven cents.

In case the amount to be inspected shall be less than ten barrels, he shall be allowed ten cents, a mile, for travel to the place, where it is to be inspected.

For beef reserved for smoking, jerking and other purposes, as provided in section, fourteen, of chapter, fifty, six cents for every two hundred pounds.

1839, 387, § 3.

For each certificate required by law, twenty five cents; for weighing hides and delivering a bill thereof, four cents a hide; to be paid by the purchaser.

1832, 18, § 4.

The inspectors shall not be entitled to receive of their deputies more than at the rate of one fifth of the fees, by them received for the above specified services.

1822, 208, § 3.

*Of butter and lard.*

For inspecting, branding, and weighing each cask, keg or firkin, seven cents, and for each certificate required by law, twenty five cents: the inspector general to receive of his deputies no more than one fifth part of the fees, paid them for the above services.

Butter and lard.  
1822, 208, § 2.  
1823, 239, § 2.

*Of hops.*

For inspecting, marking, weighing and delivering an attested schedule of the same, at the rate of ten cents for every hundred pounds, to be paid by the purchaser; exclusive of the charges of repacking and mending the bales or *packets*, [pockets] when necessary, which shall be paid by the vender; and also exclusive of storage, if stored by the inspector more than thirty days after inspection, but including storage, if for less than that time.

Hops.  
1821, 152, § 2,  
13.

1836, 202, § 2.

For a general certificate to the collector, on shipping the same, twenty five cents, to be paid by the shipper. The inspector to receive one fifth part only of the fees taken by his deputies.

1821, 152, § 5.

the town standard, and sealing each beam, weight and measure, found to be conformable to the standard, two cents, and, if not conformable, four cents; to be paid by the person for whom they are sealed.

CHAP. 151.

measures.  
1833, 306.

*Of fire arms.*

Each prover shall be entitled to receive for each barrel proved, twenty five cents, in addition to the expense of the powder necessarily used in the trial, whether the barrel shall stand the proof and be marked, or not.

Fire arms.  
1821, 162, § 2.

SECT. 22. The inspectors of the several kinds of merchandise, commissioned by the governor, may, whenever they see cause, require their respective deputies to render to them, under oath, a true account of the official services by them performed.

Inspectors may require returns from their deputies, under oath.  
1823, 398.

SECT. 23. The word, "page," when used as the measure of the contents of any record or written paper, shall mean two hundred and twenty four words, if the writing contains that number; and, in all cases where no other rule is provided, the allowance to public officers for any copies, which they are by law required to furnish, shall be at the rate of twelve cents, a page, including the alteration of the same; for affixing an official seal to the same, when necessary, twenty five cents more.

What constitutes a page. Fees for copying and annexing certificates in general cases.  
1821, 105, § 1.

SECT. 24. In all cases carried from before a justice of the peace, or municipal, police, district or probate court to a higher tribunal, all depositions and other original papers, excepting the writ, complaint, summons, citation or other process, by which the action is commenced, and the return of notice by the officer or other person serving the same, and the pleadings, shall be certified by the justice, recorder, clerk or register, and carried up without leaving copies; unless for special reasons otherwise ordered by the court, having the original jurisdiction.

On appeals to higher courts, original papers to be carried up.  
1821, 105, § 1.

SECT. 25. In all cases, not expressly provided for, the fees of all public officers, for any official service, shall be at the same rate, as are prescribed in this chapter for like services.

Of fees, not expressly provided for.

SECT. 26. Every officer, whose fees are regulated by law, shall constantly keep a printed or legibly written list and description of such fees, exposed to public view in his stated place of business, if he have one.

Fee tables, to be exposed to view, in offices.  
1821, 105, § 3.

PENAL PROVISIONS.

SECT. 27. Every officer or other person, upon receiving any such fees, as are stated in this chapter, shall, if required by the person paying the same, make out a particular account of such fees in writing, specifying for what they accrued, upon pain of forfeiting to the party paying such fees, treble the sum paid; to be recovered in an action of debt.

Account of items in writing, may be required by party paying. Penalty.  
1821, 105, § 4.  
1822, 208, § 4.

SECT. 28. If any attorney at law, or other person, shall demand and take for any writ of attachment, with a summons, or for any original summons, made returnable before any justice of the peace, or judge or recorder of any municipal or police court, together with the declaration therein contained, more than fifty seven cents of any defendant in such suit, or if, in the taxation of costs in any such suit, such justice, judge or recorder shall tax, or allow to be taxed,

Penalty, for overcharging costs on justice writs, by attorney or others.  
1839, 374, § 1.

CHAP. 151. more than that sum for the same, the person so offending, shall forfeit and pay to the defendant, paying the same, or against whom the same shall be taxed, not less than five dollars, nor more than ten, to be recovered in an action of debt.

## CHAPTER 152.

### OF THE TAXATION OF COSTS; AND THE COLLECTION AND DISPOSAL OF FINES AND COSTS, IN CRIMINAL PROSECUTIONS.

#### ARTICLE I. OF COSTS TAXED FOR JUSTICES OF THE PEACE, CIVIL OFFICERS AND WITNESSES.

- SECT. 1.** Costs to be taxed, for the justice, only on one complaint and warrant, unless more are necessary.
2. When party is ordered to recognize, justice to receive no fees, unless the grand jury find a bill.
  3. Officers to be examined under oath, as to special charges made by them.
  4. What witnesses the justice may summon and recognize, in cases before himself.
  5. What witnesses he may summon in other cases.
  6. Witnesses' fees to be paid in advance, if summoned by party prosecuted.
  7. No allowance to the complainant in any capacity, unless to persons required, officially, to complain.
  8. Only one travel and attendance allowed to witnesses, though summoned in several causes.
  9. When witnesses' fees for attendance may commence in the S. J. C.
  10. When the justice may receive the costs, and pay over to those entitled thereto.
  11. Disposal of fees, not called for within a year.
  12. Certain bills of costs, to be allowed by the county commissioners.
  13. If either of the C. C. be interested, judges of the district court to take cognizance thereof.
  14. In cases carried from a justice to a higher court, costs to be certified.
  15. Jurisdiction of S. J. C. and D. C. as to costs.
  16. Of expenses of supporting prisoners in jail.

#### ARTICLE II. OF THE COLLECTION AND DISPOSAL OF FINES AND COSTS, ACCRUING TO THE STATE OR COUNTY.

- SECT. 17.** Certificates of fines and costs, required from the clerk of the judicial courts.
18. Duty of clerks to collect fines and costs, or issue process.
  19. Officers to pay over to county treasurer, fines and costs, collected.
  20. Penalty for their neglect. Treasurer's duty.
  21. Officers receiving warrants, &c. for collection, to produce receipts to the court, or give a good excuse.
  22. Justices of the peace to account for, and pay over fines, &c. to treasurer of county or town, &c.
  23. County treasurers to account with state treasurer.
  24. Fees allowed to individuals must be claimed within three years.
  25. County treasurer to account to the governor, &c. for unclaimed moneys, and for fees allowed the attorneys for the state.
  26. County treasurer to account to the county for jury fees, and for jailer's charges, &c.
  27. Fines and costs in justices' prosecutions, how appropriated.
  28. Sheriff to deliver over certain securities to the county treasurer.
  29. Treasurer to exhibit a schedule of the same to the commissioners.
  30. Proceedings of commissioners thereon.
  31. Secretary of state to compare the treasurer's books with returns of the clerks, &c.
  32. Secretary's duty, as to unpaid fines.
  - 33, 34, 35. Proceedings of the county attorney, in reference to delinquents.

SECT. 36. County attorneys to report to the secretary of state.

ARTICLE III. GENERAL PROVISIONS RELATING TO JUDGES OF MUNICIPAL AND POLICE COURTS.

CHAP. 152.

SECT. 37. Judges of municipal and police courts.

ARTICLE 1. OF COSTS TAXED FOR JUSTICES OF THE PEACE, CIVIL OFFICERS AND WITNESSES.

SECTION 1. Where several warrants are issued by any justice of the peace, against one or more defendants, when only one warrant is necessary, no more costs shall be allowed therefor to the justice, than for one complaint and warrant.

Costs to be taxed by the justice only on one complaint and warrant, unless more are necessary. 1823, 235, § 4. When party is ordered to recognize, justice to receive no fees, unless the grand jury find a bill. 1823, 235, § 3.

SECT. 2. When a party, accused before a justice of the peace, as been ordered to recognize to answer before any court, having jurisdiction of the offence, and the grand jury on examination of the evidence before them, shall not find an indictment against such party, the justice shall not be entitled to any fees for his services in the case; and, in no case, shall he tax other or greater fees than are expressly allowed by law.

Officers, to be examined under oath, as to special charges made by them. 1823, 235, § 2.

SECT. 3. The justices of the supreme judicial court, and of the several district courts, and justices of the peace, before whom any criminal prosecution may be pending, shall not allow any charge for aid, or other expenses of the officer, in serving the warrant in such case, other than the stated fees for the officer's service and travel; unless, after examination of the officer under oath, and on such other testimony as they shall think proper, they find reasonable cause to justify such additional charges.

SECT. 4. Any justice of the peace, when a complaint has been made before him, and a warrant issued thereon, may order such witnesses, as he is satisfied can testify to material facts, and whose testimony is necessary, and no other, to be summoned to attend the examination or trial; and the justice, who shall have cognizance of the case, may order such witnesses only, as he is satisfied are material and necessary, to recognize to appear at any higher court, to which such case may be carried by appeal, or otherwise.

What witnesses the justice may summon and recognize in criminal cases before himself. 1823, 235, § 1.

SECT. 5. No justice of the peace, except as provided in the preceding section, shall issue summonses for witnesses to appear and give evidence in any criminal suit, unless by the request of the attorney general, or some county attorney; and it shall be expressed in every such summons, that the same is issued by such request.

What witnesses he may summon in other criminal cases. 1821, 82, § 1.

SECT. 6. When a justice shall issue any summons for a witness, at the request of any person, prosecuted in a criminal suit, it shall be so expressed in the summons; and the witness shall thereby be required to appear and give evidence, upon condition that such party pay him his legal fees.

Witness' fees to be paid in advance, if summoned by party prosecuted. 1821, 82, § 1.

SECT. 7. No costs shall be allowed by a justice of the peace for the benefit of any complainant, whether as an officer, witness, or in any other capacity; provided, that a police officer or constable, duly qualified, and acting under the authority of a town, or complaining in cases where, by particular provisions of law, it is made his duty to complain, may be allowed his fees as an officer.

No allowance to the complainant in any capacity, unless to persons required officially to complain. 1823, 235, § 1. 1836, 227, § 2.

SECT. 8. When any person shall have been summoned as a witness, in more than one criminal prosecution, before a justice of

Only one travel and attendance allowed to witnesses, though

the state, shall be refunded by the state ; the jailer, in each county, shall render on oath to the county commissioners, at each stated session thereof, an account of all such expenses, stating the time when each prisoner was committed, for what offence, how long held, and, if his term has expired, when discharged, and shall exhibit the warrants of commitment and discharge ; and the jailer shall credit all moneys and effects whatever received or to be received of the prisoner, or of other persons on his account ; and the court, on due examination into the nature of the accounts, and the ability of the prisoner to refund any part of such expenses, shall order such sums as they think reasonable, to be paid to the jailer, not exceeding one dollar, a week, from the county treasurer.

**ARTICLE II. OF THE COLLECTION AND DISPOSAL OF FINES AND COSTS, ACCRUING TO THE STATE, COUNTY OR TOWN.**

**SECT. 17.** The clerk of the judicial courts shall attest and deliver to the county treasurers, copies of all bills of costs allowed by said courts, and certificates of all fines and forfeitures, imposed and accruing to the state or to the county, either before the rising thereof, or as soon after as may be ; and shall also deliver to him a separate certificate of all the bills of costs, allowed by said courts, setting down therein the sum total only of each, in order that the same may be charged and used, as a voucher, in his account with the treasurer of the state, as provided in the twenty third section of this chapter. The said clerk shall also return, to the treasurer of the state, a certificate of all fines and forfeitures, imposed to the use of the state in said courts.

Certificates of fines and costs, required from the clerk of the judicial courts. 1821, 82, § 2.

**SECT. 18.** The clerk of said courts shall receive all fines, forfeitures or bills of costs paid or tendered to him, before the issuing of any process for the collection thereof, and pay over the same to the treasurer of the county ; and, in default of such payment made to him, issue warrants of distress or such other process therefor as the court may find necessary to enforce the execution of any order, sentence, or judgment, for or in behalf of the state, and deliver the same to the sheriff, or to such coroner or constable as the attorney general or county attorney shall direct ; and shall enter of record the name of the officer, and the time, when the same is delivered to such officer.

Duty of clerks to collect fines and costs, or issue process. 1830, 464, § 1.

**SECT. 19.** All sheriffs, jailers, constables and coroners, who may, by virtue of their office, receive any fines, forfeitures, or bills of costs, whether such fines and forfeitures accrue to the state or to the county, except debts and costs received upon executions in favor of the state, shall forthwith pay the same to the treasurer of the county, in which the same shall have accrued.

Officers to pay over to county treasurer, fines and costs collected. 1821, 82, § 3.

**SECT. 20.** If any such officer, receiving such fine, forfeiture or costs, shall, for the space of thirty days after the receipt thereof, neglect to pay over the same, or, if he shall permit any person sentenced to pay such fine, forfeiture, or bill of costs, and committed to his custody, to go at large without payment, unless by order of law, and shall not within thirty days after such escape pay the amount thereof to the county treasurer, he shall forfeit and pay double the amount ; and it shall be the duty of the county treas-

Penalty for their neglect. Treasurer's duty. 1821, 82, § 3.



to the payment of sums allowed by the judicial courts, pursuant to the fifteenth section of this chapter; and the county treasurer shall credit his county with the same, instead of the state.

CHAP. 152.  
1825, 303, § 1.

SECT. 28. The sheriff in each county shall, as often at least as every three months, deliver over to the treasurer of his county all notes or other securities by him taken for fines and costs, on the liberation of poor convicts from prison pursuant to law.

Sheriff to deliver over certain securities to the county treasurer.  
1830, 464, § 5.

SECT. 29. The county treasurer shall, at the next following session of the county commissioners, lay before them a schedule of all such notes, with the amounts due on them, respectively, to be filed with the clerk.

Treasurer to exhibit a schedule of the same to the commissioners.  
1830, 464, § 5.

SECT. 30. The commissioners shall, from time to time, examine such notes and securities, and order the county attorney to take such legal measures for their collection by suit or otherwise, as they shall judge expedient; and they may authorize the treasurer to compound with any of the persons liable on such notes or securities, or cancel the same, on such terms as the board shall direct.

Proceedings of the commissioners thereon.  
1830, 464, § 5.

SECT. 31. The secretary of state, from time to time, as the governor and council may direct, shall cause the books of the treasurer of the state, and the accounts of the several county treasurers, deposited in the office of the treasurer of the state, to be compared with the returns, made to him pursuant to the provisions of section, thirteen, of chapter, one hundred, from the clerks of the judicial courts, and shall ascertain what fines, forfeitures and bills of costs have not been paid over to the use of the state.

Secretary of state to compare the treasurer's books with the returns of the clerks, &c.  
1830, 464, § 3.

SECT. 32. The secretary of state shall make out separate schedules for each county, of unpaid fines, forfeitures and bills of costs, and make appropriate entries and records thereof, to be kept in his office; and shall transmit such schedules to the attorneys of the respective counties, certifying thereon, that the same appear to be due and unpaid.

Secretary's duty, as to unpaid fines, &c.  
1830, 464, § 3.

SECT. 33. The several county attorneys shall examine the records and files in the offices of clerks in their respective counties, and the certificates and accounts in the offices of the respective county treasurers, relating to fines, forfeitures and bills of costs, accruing to the use of the state, and ascertain, so far as practicable, the causes of any delinquencies, which may appear in paying over the same; and shall move the respective courts for all such orders and processes, as may be deemed necessary, to enforce the collection and payment of the same.

Proceedings of the county attorney, in reference to delinquents.  
1830, 464, § 2, 4.

SECT. 34. Whenever any sheriff or other officer shall appear not to be discharged of any such fine, forfeiture or bill of costs, committed to him to collect, the county attorney shall cause him to be summoned and brought before the court, in which the same was imposed, to show a proper discharge for the same, or the cause, why the same is not collected or paid over, as provided in the twenty first section of this chapter.

Same subject.  
1830, 464, § 2, 4.

SECT. 35. The county attorney shall carry into execution all lawful orders of the courts aforesaid, relating to the collection and payment of such fines, forfeitures and bills of costs, and by all other means, pertaining to his office, shall promote and enforce the collection and payment thereof.

Same subject.  
1830, 464, § 2, 4.

## TITLE TWELFTH.

## Of crimes and offences, proceedings in criminal cases, punishments and prisons, and incidental provisions.

- CHAPTER 153.** Of offences against the sovereignty of the state.
154. Of offences against the lives and persons of individuals.
  155. Of offences against habitations, and other buildings, including arson, burglary and similar crimes.
  156. Of larceny, and the receiving of stolen goods.
  157. Of forgery and counterfeiting.
  158. Of offences against public justice.
  159. Of offences against the public peace.
  160. Of offences against chastity, morality and decency.
  161. Of cheating by false pretences, gross frauds, and conspiracy.
  162. Of malicious mischief, and trespasses on property.
  163. Of offences against the public health, safety and policy.
  164. Of nuisances.
  165. Of libel.
  166. Crimes and offences within the jurisdiction of different courts.
  167. General provisions relating to crimes and punishments.
  168. Of sentence and execution thereof in criminal cases.
  169. Of proceedings for prevention of crimes.
  170. Of the power and proceedings of justices of the peace in criminal cases.
  171. Of commencement of proceedings in criminal cases.
  172. Of proceedings in court in criminal cases.
  173. As to the disposal of insane persons, when prosecuted for crimes or offences.
  174. Of fugitives from justice, and conditional pardons.
  175. Of the liberation of poor convicts.
  176. Of coroners' inquests.
  177. Of the state prison.
  178. Of houses of correction.

**CHAPTER 153.**

## OF OFFENCES AGAINST THE SOVEREIGNTY OF THE STATE.

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| <p><b>SECT. 1.</b> Treason.</p> <p>2. Two witnesses necessary for conviction, unless on confession.</p> <p>3. Misprision of treason.</p> <p>4. Necessary proof.</p> | <p><b>SECT. 5.</b> Limitation, as to time of prosecution.</p> <p>6. Usurpation of jurisdiction, by foreign power, within limits defined by the treaty of 1783.</p> |
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**SECTION 1.** Whoever shall be guilty of treason, by levying war against the state, adhering to its enemies, giving them aid and comfort, shall be punished with death.

**SECT. 2.** No person shall be indicted and convicted of treason, unless on the testimony of two witnesses to the same overt act, or by confession in open court.

**SECT. 3.** If any person shall have knowledge of any treason committed, or to be committed, and shall conceal the same, and shall not, as soon as may be, give information thereof upon oath to the governor of the state, a judge of a court of record, or to a

Treason.  
Const. art. 1,  
§ 12.

Two witnesses  
necessary for  
conviction, un-  
less on confes-  
sion.

Const. art. 1,  
§ 12.

Misprision of  
treason.  
1821, 1, § 2, 3.

- SECT. 19.** Abduction with intent to compel, &c.
- 20.** Forcible confinement and kidnaping.
- 21.** Where the offence may be tried. Subsequent consent, no justification, unless proved to be without duress, or fraud.
- 22.** Exposure and abandonment of children.
- 23.** Masters of vessels, transporting minors and indented servants out of the state.
- 24.** Enlistment of a minor into the U. S. army, without the consent of his parent, &c.
- 25.** Enticing such out of the state for the purpose of enlisting.

- SECT. 26.** Threatening communications to extort money, or for other purposes.
- 27.** Assault with intent to ravish, if the female be ten years old, or upwards.
- 28.** If under ten years of age.
- 29.** Assault by a person armed, with intent to murder, &c.
- 30.** Assault with such intent, by a person not armed.
- 31.** Other felonious assaults.
- 32.** Attempt to murder by poison, or other means, not constituting an assault.
- 33.** Assault and battery defined.
- 34.** Punishment thereof.
- 35.** Jurisdiction of justices of the peace, in cases of assault and battery.

**CHAP. 154.**

**SECTION. 1.** Whoever shall unlawfully kill any human being, with malice aforethought, either express or implied, shall be deemed guilty of murder. Murder defined. 13 Mass. 356.

**SECT. 2.** Whoever shall commit murder with express malice aforethought, or in perpetrating or attempting to perpetrate any crime, punishable with death, or imprisonment in the state prison for life, or for an unlimited term of years, shall be deemed guilty of murder of the first degree, and shall be punished with death. Murder in the first degree. 1821, 2, § 1. 9 Pick. 496.

**SECT. 3.** Whoever shall commit murder, otherwise than is set forth in the preceding section, shall be deemed guilty of murder of the second degree, and shall be punished by imprisonment for life in the state prison. Murder in the second degree.

**SECT. 4.** Upon the trial of an indictment for murder, the jury, if they find the defendant guilty, shall inquire and, by their verdict, ascertain, whether he be guilty of murder of the first or second degree; but, if such defendant be convicted upon his confession in open court, the court shall proceed by the examination of witnesses, to determine the degree of the murder, and to award sentence accordingly. Jury to find the degree, on trial; but the court, on confession.

**SECT. 5.** Whoever shall unlawfully kill any human being in the heat of passion, upon sudden provocation, without malice aforethought, either express or implied, or in any manner shall be guilty of manslaughter, at common law, shall be punished by imprisonment in the state prison, not more than ten years, or by fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year. Manslaughter. 1821, 2, § 3.

**SECT. 6.** Every person, being an inhabitant or resident of this state, who shall, within the same, make an appointment or engagement to fight a duel with deadly weapons, and shall fight such duel, without the jurisdiction of this state, and, in so doing, shall inflict a mortal wound on any person, whereof such person shall afterwards die, within this state, shall be deemed guilty of murder of the first degree, within this state, and be punished accordingly; and may be indicted, tried and convicted in the county, where such death shall happen. Jurisdiction, in case of death in the state, from a wound in a duel out of the state.

CHAP. 154.

Seconds in any such fatal duel, deemed accessory to murder before the fact.

SECT. 7. Every person, being an inhabitant or resident of this state, who shall, by previous appointment or engagement made within the same, be the second of either party in such duel, as is mentioned in the preceding section, and shall be present, as such second, when such mortal wound is inflicted, whereof death shall ensue within this state, shall be deemed to be accessory, before the fact, to murder of the first degree within this state, and be punished accordingly; and may be indicted, tried and convicted, in the county where the death shall happen.

Plea of former conviction or acquittal without the state.

SECT. 8. Any person, indicted under either of the two preceding sections, may plead a former conviction or acquittal of the same offence in any other state or country; and such plea, if admitted or established, shall be a bar to all further or other proceedings against such person for the same offence within this state.

Party to a duel, whether as principal, second, surgeon, or otherwise. Challenges. 1821, 2, § 7.

SECT. 9. Every person, who shall fight a duel with deadly weapons, or who shall be present at the fighting of such duel, as an aid, second or surgeon, or shall advise, encourage or promote such duel, although no homicide ensue, and every person, who shall challenge another to fight a duel, or shall send or deliver any verbal or written message, purporting or intended to be such challenge, although no duel shall ensue, shall be punished by imprisonment in the state prison, not more than twenty years, or by fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year; and shall also be incapable of holding, being elected, or appointed to any office, or place of honor, trust or profit, under this state, for the term of twenty years after conviction.

Accepting a challenge. Aiding or encouraging such challenge or acceptance. 1821, 2, § 8.

SECT. 10. Every person, who shall accept such challenge, and every person, who shall engage to act as a second or as a surgeon on such acceptance, or who shall knowingly carry and deliver any such challenge or acceptance, or who shall advise, encourage or promote the same, although no duel ensue, shall be punished by imprisonment in the county jail, not more than one year, and by fine not exceeding one thousand dollars; and shall also be incapacitated, as mentioned in the preceding section, for the term of five years after conviction.

Going out of the state, for the purpose of a challenge or duel. Conviction in another state may be pleaded in bar.

SECT. 11. If any inhabitant or resident of this state, shall leave the same for the purpose of eluding the operation of the provisions of the two preceding sections, with intent to give or accept a challenge, or to fight a duel out of the state, or to aid, as a second or as a surgeon in any such duel out of the state, he shall be deemed as guilty, and be subject to like punishment, as if the offence had been committed within this state; and may be indicted, tried and convicted in the county where he may reside; and a former conviction or acquittal for the same offence, in any other state or country, may be pleaded on such trial, and, if admitted or established, shall be a bar to any further or other proceedings against such person for the same offence.

Posting, and contemptuous provocations to a duel.

SECT. 12. If any person shall post another, or, in writing or print, use any reproachful or contemptuous language to or concerning another, for not fighting a duel, or for not sending or not accepting a challenge, he shall be punished by imprisonment in the county jail, not more than one year, and by fine, not exceeding one hundred dollars.

**SECT. 13.** If any person, with malicious intent to maim or disfigure, shall cut or maim the tongue, put out or destroy an eye, cut or tear off an ear, cut, slit or mutilate the nose or lip, or cut off or disable a limb or any other member of another person, he shall be punished by imprisonment in the state prison, not more than twenty years.

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Maiming, and malicious disfiguring.  
1821, 2, § 4.

**SECT. 14.** If any person shall, with force or violence, or by putting in fear, feloniously steal and take from the person of another any property, that is the subject of larceny, he shall be deemed guilty of robbery; and every such offender shall be punished according to the aggravation of the offence, as is provided in the two following sections.

Robbery.  
1821, 7, § 7.  
7 Mass. 242.

**SECT. 15.** If such offender, at the time of such robbery, shall be armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed, or if, being so armed, he shall wound or strike the person robbed, or if he shall have any confederate aiding and abetting him in such robbery, present and so armed, he shall be punished by imprisonment in the state prison, for life.

Punishment, if with a dangerous weapon.  
1821, 7, § 8.  
1829, 430, § 1.  
17 Mass. 359.

**SECT. 16.** If such offender shall commit such robbery otherwise than as mentioned in the preceding section, he shall be punished by imprisonment in the state prison for any term of years, or for life.

Punishment in other cases.  
1821, 7, § 7.  
1829, 430, § 1.

**SECT. 17.** If any man shall ravish and carnally know any female of the age of ten years or more, by force and against her will, or shall unlawfully or carnally know and abuse any female child under the age of ten years, he shall be punished by imprisonment in the state prison, for life.

Rape.  
1821, 3, § 1.  
1829, 430, § 5.

**SECT. 18.** If any person shall take any woman unlawfully and against her will, and, by force, menace or duress, compel her to marry him, or any other person, or to be defiled, he shall be punished by imprisonment in the state prison, for life, or any term of years.

Forcible abduction, and compulsion to marry, &c.

**SECT. 19.** If any person shall take any woman, unlawfully and against her will, with intent to compel her by force, menace or duress, to marry him or any other person, or to be defiled, he shall be punished by imprisonment in the state prison, not more than ten years.

Abduction, with intent to compel, &c.

**SECT. 20.** Whoever, without lawful authority, shall confine or imprison any person in this state against his will, or shall forcibly transport or carry any person out of the state, or from one place to another place within the state, without his consent, or shall forcibly seize, inveigle, convey or kidnap any person, with intent to cause such person to be so confined or imprisoned, or so transported or carried against his will and consent, or shall sell as a slave, or in any manner transfer, for any term, the service of any negro or mulatto, or other person of color, who shall have been unlawfully seized, inveigled or kidnapped as aforesaid, he shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

Forcible confinement and kidnapping.  
1821, 22, § 1.  
1838, 323, § 1.

**SECT. 21.** Every offence, mentioned in the preceding section, may be indicted and tried, either in the county, in which the same

Where the offence may be tried. Subsequent consent

**CHAP. 154.** may have been committed, or in which such person may have been taken or confined, or to which he may have been carried or brought; and, on the trial, the consent of such person shall not be a defence, unless it shall be made to appear to the jury, that such consent was not obtained by fraud, threats or duress.

no justification, unless proved to be without duress, or fraud. 1838, 323, § 2.

**SECT. 22.** If the father or mother of any child, under the age of six years, or any person to whom such child shall have been confided, shall expose such child in any highway, street, field, house or outhouse, or in any other place, with intent wholly to abandon it, he or she shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year.

**SECT. 23.** Every master or commander of any ship or vessel, who shall knowingly carry or transport, out of this state, any person under the age of twenty one years, or any apprentice, or indented servant, without the consent of his parent, master and guardian, shall be punished by a fine not exceeding two hundred dollars, and shall be further liable to such parent, master or guardian, for all damages sustained, in an action on the case.

Exposure and abandonment of children.

Masters of vessels, transporting minors and indented servants out of the state. 1821, 22, § 2. 2 Fairf. 103.

Enlistment of minors into the U. S. army, without consent of parents, &c. 1821, 22, § 3.

**SECT. 24.** If any person within this state shall enlist, or cause to be enlisted, into the army of the United States, any minor under the age of twenty one years, knowing him to be such minor, without the consent in writing of his parent, master and guardian, and such minor shall, within six months after his enlistment, be removed out of this state, so that he cannot be had before the tribunals of this state, by writ of habeas corpus, he shall be punished by a fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year.

Enticing such out of the state, for the purpose of enlisting. 1821, 22, § 4.

**SECT. 25.** If any person, knowing one to be a minor under the age of twenty one years, shall persuade him to depart from this state, with intent to enlist into the army of the United States, without the consent of his parent, master and guardian, he shall be punished, as provided in the preceding section.

Threatening communications to extort money, or for other purposes.

**SECT. 26.** If any person shall, either verbally or by any written or printed communication, maliciously threaten to accuse another of a crime or offence, or to do any injury to the person or property or another, with intent thereby to extort any money or pecuniary advantage whatever, or to compel the person, so threatened, to do any act against his will, he shall be punished by imprisonment in the state prison, not more than two years, or by fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year.

Assault, with intent to ravish, if the female be ten years old or upwards. 1821, 3, § 3. 15 Mass. 187. 2 Pick. 380. 4 Pick. 252.

If under ten years of age. 1821, 3, § 4.

Assault, by a person armed,

**SECT. 27.** If any person, with intent to commit a rape, shall assault any female of the age of ten years or more, he shall be punished by imprisonment in the state prison, not more than ten years, or by fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year.

**SECT. 28.** If any person, with intent to commit a rape, shall assault a female under the age of ten years, he shall be punished by imprisonment in the state prison, not more than twenty years.

**SECT. 29.** If any person, being armed with a dangerous weapon,

shall assault another, with intent to murder, kill, maim, rob, steal, or to commit arson or burglary, he shall be punished by imprisonment in the state prison, not more than twenty years.

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SECT. 30. If any person, not being armed with a dangerous weapon, shall assault another with intent to murder, kill, maim, rob, steal, or to commit arson or burglary, he shall be punished by imprisonment in the state prison, not more than ten years, or by fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year.

with intent to murder, &c. 1821, 2, § 5, 6. 1821, 7, § 9. Assault, with such intent, by a person not armed. 1821, 2, § 6. 1821, 7, § 11. 1836, 241, § 1.

SECT. 31. If any person shall assault another with intent to commit any felony or crime, punishable with imprisonment in the state prison, where the punishment for such assault is not otherwise herein before prescribed, he shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding five hundred dollars, and by imprisonment in the county jail not more than one year.

Other felonious assaults.

SECT. 32. If any person, with intent to murder, shall mingle poison in any food, drink or medicine, or shall poison any spring, well or reservoir of water, or shall, in any way, attempt to kill or murder by poisoning, drowning, suffocating, or by any other means, not constituting an assault with an intent to kill or murder, he shall be punished by imprisonment in the state prison, not more than twenty years.

Attempt to murder by poison, or other means, not constituting an assault. 1836, 241, § 2.

SECT. 33. If any person shall unlawfully offer or attempt to strike, hit, touch, or do any violence, however small, to the person of another, in a wanton, wilful, angry or insulting manner, with or without a weapon, or through the instrumentality or intervention of any thing animate or inanimate, and under circumstances, where an intention and existing ability, at the time, to do some violence to the person of another is apparent, he shall be deemed guilty of an assault; and, if such attempt be effected, and the person of another be struck, hit, touched or injured, in however slight degree, in manner above mentioned, the offender shall be deemed guilty of an assault and battery.

Assault and battery defined.

SECT. 34. Whoever shall be convicted, upon indictment, of an assault, or an assault and battery, where no other punishment is prescribed, shall be punished by a fine, not exceeding two hundred dollars, and by imprisonment in the county jail, not more than one year.

Punishment thereof.

SECT. 35. Every justice of the peace shall have concurrent jurisdiction, with the district court, of all assaults and batteries committed in his county, which are not of a high and aggravated nature; and, on conviction, he may punish the offender by fine, not exceeding ten dollars, or by imprisonment in the county jail, not more than one month.

Jurisdiction of justices of the peace, in cases of assault and battery. 1821, 76, § 1.

any corn, grain, hay, or other produce, or any fences, wood, boards or other lumber, or any soil, vegetables, trees, underwood or any other property of another, he shall be punished by imprisonment in the state prison, not more than three years. **CHAP. 155.**

**SECT. 7.** The preceding sections shall severally extend to a married woman, who shall commit either of the offences therein, without the consent of her husband, though the property burnt, or set on fire, may belong, in part or in whole, to her husband. lumber, and other property. 1821, 4, § 4. Wife liable, though the property burnt be her husband's.

**SECT. 8.** If any person, with intent to commit a felony, shall, in the night time, break and enter, or, having entered with such intent, shall, in the night time, break a dwelling house, any person being then lawfully therein, such offender shall be deemed guilty of burglary; and shall be punished, according to the aggravation of the offence, as is provided in the two following sections. Burglary defined. 1821, 6, § 2. 7 Mass. 245. 8 Pick. 354.

**SECT. 9.** If such offender, at the time of committing such burglary, shall be armed with a dangerous weapon, or shall so arm himself after having entered such dwelling house, or shall actually assault any person being lawfully therein, or shall have any confederate, present, aiding and abetting in such burglary, he shall be punished by imprisonment in the state prison, for life. Punishment, if offender be armed, or have confederates. 1821, 6, § 1.

**SECT. 10.** If such offender shall commit such burglary, otherwise than as mentioned in the preceding section, he shall be punished by imprisonment in the state prison, for life or any term of years. Punishment, if without such aggravation. 1821, 6, § 2.

**SECT. 11.** If any person, with intent to commit a felony, shall, in the day time, break and enter, or shall, in the night time, enter, without breaking, any dwelling house, or shall, at any time, break and enter any office, bank, shop, warehouse, ship or vessel, or any building in which any goods, merchandise or valuable things shall be kept for use, sale or deposit, any person, being lawfully therein and put in fear, such offender shall be punished by imprisonment in the state prison not more than ten years; but, if no person was lawfully in such building, ship or vessel, and put in fear, at the time of committing such offence, such offender shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year. With felonious intent, entering dwelling houses, or certain other buildings or vessels, under special aggravations, but not constituting burglary. 1821, 7, § 5. 8 Mass. 490. 22 Pick. 1.

**SECT. 12.** Any house, prison, jail or other permanent edifice, usually occupied by any person or persons, by lodging therein, at nights, shall be deemed a dwelling house of any such persons, although such occupants may, for a time, be absent, leaving furniture or goods, with an intention of returning; but no warehouse, barn or other outhouse, shall be deemed a dwelling house or part of a dwelling house, unless the same shall be joined to or connected and occupied with, and as a part of, the dwelling house. What constitutes a dwelling house.



**SECT. 4.** Every person, who shall commit larceny by stealing in any building that is on fire, or by stealing any property, removed in consequence of alarm occasioned by fire, shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year.

**CHAP. 156.**  
Larceny at fires.  
1821, 132, § 9.

**SECT. 5.** Every person, who shall commit larceny by stealing from the person of another, shall be punished by imprisonment in the state prison, not more than six years, or by fine, not exceeding five hundred dollars, and imprisonment in the county jail, not exceeding one year.

Larceny from  
the person of  
another.  
1821, 7, § 10.

**SECT. 6.** If any officer, agent, clerk or servant of any incorporated company, or if any clerk, agent or servant of any person or copartnership, except apprentices and other persons under the age of sixteen years, shall embezzle and fraudulently convert to his own use, or shall take and secrete, with intent to convert to his own use, without the consent of his employer or master, any money or property of another, which shall have come to his possession, or shall be under his care by virtue of such employment, he shall be deemed, by so doing, to have committed larceny, and shall be punished accordingly.

Embezzlement  
by officers,  
clerks, agents  
or servants.

**SECT. 7.** If any carrier or other person, to whom any money, goods or other property, which may be the subject of larceny, shall have been delivered, to be carried for hire, or if any other person, who shall be entrusted with such property, shall embezzle or fraudulently convert to his own use any such money; goods or other property, either in the mass, as the same were delivered or otherwise, and before the same shall be delivered at the place, or to the person, where and to whom, they were to be delivered, he shall be deemed, by so doing, to have committed larceny, and be punished accordingly.

Embezzlement  
by carriers, or  
other persons,  
entrusted with  
property, to be  
delivered to  
another.

**SECT. 8.** Every person, who shall falsely personate or represent another, and, in such assumed character, shall receive any money or other thing intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed, by so doing, to have committed larceny, and shall be punished accordingly.

Fraudulently  
personating  
another, and re-  
ceiving proper-  
ty.

**SECT. 9.** If any person, having been before convicted of larceny upon indictment, or of being accessory thereto before the fact, shall afterwards commit, or be accessory before the fact to another larceny, and be thereof convicted on indictment, or if any person, at the same term of the court, shall be convicted, as principal or as accessory before the fact, in three distinct larcenies, he shall be deemed a common and notorious thief, and shall be punished by imprisonment in the state prison, not less than four years, nor more than fifteen years.

Punishment of  
a person, con-  
victed as a com-  
mon and noto-  
rious thief.  
1821, 7, § 3.  
22 Pick. 1.

**SECT. 10.** Every person, who shall buy, receive or aid in concealing any stolen money, goods or other property, knowing the same to have been stolen, shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year.

Person receiv-  
ing or conceal-  
ing stolen  
goods.  
1821, 7, § 12.

SECT. 12. False certificates of acknowledgment, or proof of deeds.

13. Fraudulently connecting parts of different notes or instruments together. Alterations.

14. Fraudulent obliterations, deemed forgery.

15. Fictitious signatures, as officers of corporations, deemed forgery.

16. Counterfeiting gold or silver coin, or having ten or more pieces of false money, with intent, &c.

SECT. 17. Having any such in possession, or uttering with intent, &c.

18. Punishment on repetition of the offence.

19. Making or having instruments for counterfeiting, with intent to use.

20. Counterfeiting foreign coins for exportation.

21. Rewards to prosecutors, on conviction and sentence.

CHAP. 157.

SECTION 1. If any person, with intent to defraud, shall falsely make, alter, forge or counterfeit any public record, or any process issued or purporting to be issued by any competent court, magistrate or officer, or any pleading or proceeding filed or entered in any court of law or equity, any attestation or certificate of any public officer or other person, in relation to any matter wherein such attestation or certificate is required by law, or may be received or be taken as legal proof, any charter, deed, will, testament, bond, writing obligatory, power of attorney, letter of credit, policy of insurance, bill of lading, bill of exchange, promissory note, or any order, acquittance, discharge or accountable receipt for money or other valuable thing, or any acceptance of any bill of exchange, or order, or any indorsement or assignment of any bill of exchange, promissory note or order, or of any debt or contract, or any other instrument in writing, being or purporting to be the act of another, by which any pecuniary demand or obligation, or any right or interest in or to any property whatever shall be, or shall purport to be created, increased, transferred, conveyed, discharged or diminished, he shall be punished by imprisonment in the state prison, not less than two years, nor more than ten years.

Forgery of records and processes, attestations and certificates, deeds and other instruments in writing.  
1821, 11, § 1.  
10 Mass. 181.  
2 Greenl. 365.

SECT. 2. If any person shall utter and publish, as true, any record, process, certificate, deed, will, or any other instrument or writing mentioned in the preceding section, knowing the same to be false, altered, forged or counterfeit, with intent to defraud, he shall be punished by imprisonment in the state prison, not less than two years, nor more than ten years.

Uttering the same as true.  
1821, 11, § 1.  
11 Mass. 136.

SECT. 3. If any person, with intent to defraud, shall falsely make, alter, forge or counterfeit any note, certificate, bill of credit, or other instrument, being public security for money or other property, issued, or purporting to be issued by authority of this state, or any other of the United States or any territory thereof, or any indorsement or other writing, purporting to transfer the right or interest of any holder of such public security, he shall be punished by imprisonment in the state prison for life, or any term of years.

Forgery of public securities.  
1821, 11, § 2.

SECT. 4. If any person, with intent to defraud, shall falsely make, alter, forge or counterfeit any bank bill or promissory note, payable to the bearer thereof, or to the order of any person, issued or purporting to be issued by any bank or banking company, established within this state, or in any of the United States, and signed in behalf of such bank or banking company, he shall be punished by imprisonment in the state prison, for life or any term of years.

Forgery of bank notes.  
1821, 11, § 2.

the certificate under oath of the secretary of the treasury, or treasurer of the United States, or of the secretary or treasurer of any state or territory, on whose behalf such public security purports to be issued, of the tenor of the true bill of credit or other public security alleged to be forged or altered, shall be admitted in evidence, for the purpose of proving the same to be forged or altered.

SECT. 12. If any officer or magistrate, legally authorized to take the proof or acknowledgment of any conveyance of real estate, or of any other instrument, which by law may be recorded, shall, wilfully and falsely, certify, that any such instrument or conveyance was acknowledged by any party thereto, when, in truth, no such acknowledgment was made, or that the same was proved, when, in truth, no such proof was made, he shall be deemed guilty of forgery, and shall be punished, as provided in the first section.

False certificates of acknowledgment or proof of deeds.

SECT. 13. If any person shall fraudulently connect together different parts of several genuine bank bills, notes or other instruments in writing, so as to produce one instrument, or shall alter any note or instrument in writing, in a matter that is material, with intent to defraud, the same shall be deemed forgery in like manner, as if such note, bill or instrument had been forged and counterfeited, and the offender shall be punished accordingly.

Fraudulently connecting parts of different notes or instruments together. Alterations. 10 Mass. 34.

SECT. 14. The total erasure or obliteration of any record, process, certificate, deed, will or any other instrument in writing, mentioned in this chapter, with intent to defraud, shall be deemed forgery; and the offender shall be punished in like manner, as if the same had been forged and counterfeited.

Fraudulent obliterations, deemed forgery.

SECT. 15. If any fictitious or pretended signature, purporting to be the signature of any officer or agent of any corporation, shall be fraudulently affixed to any instrument in writing, purporting to be a draft, note, or other evidence of debt, issued by such corporation, with intent to pass the same as true, it shall be deemed forgery, though no such person may ever have been an officer or agent of such corporation, or ever have existed; and the offence shall be punished, as provided in the first section of this chapter.

Fictitious signatures, as officers of corporations deemed forgery. 2 Mass. 77.

SECT. 16. If any person shall forge or counterfeit any gold or silver coin, current in this state, or shall have in his possession, at one time, ten or more pieces of false money or coin, current, as aforesaid, with intent to pass the same as true or false, knowing the same to be forged and counterfeit, he shall be punished by imprisonment in the state prison, for life or any term of years.

Counterfeiting gold or silver coin, or having ten or more pieces of false money with intent, &c. 1821, 11, § 8. 21 Pick. 523.

SECT. 17. If any person shall bring into this state, or have in his possession, at one time, any number of pieces, less than ten, of such false or counterfeit coin, knowing the same to be false or counterfeit, with intent to utter or pass the same as true or false; or if any person shall utter or pass, or tender in payment, any such coin, knowing it to be false or counterfeit, with intent to defraud any person, he shall be punished by imprisonment in the state prison, not more than three years, or by fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year.

Having any such in possession, or uttering, &c. with fraudulent intent. 1821, 11, § 9.

SECT. 18. If any person, having been convicted of either of the offences mentioned in the preceding section, shall afterwards be

Punishment, on repetition of the offence. 1821, 11, § 9.

- SECT. 12.** The party informing exempted from punishment.
13. Attempt to corrupt jurors or referees.
  14. Misconduct of jurors.
  15. Sheriffs, &c. receiving bribes for neglect of official duties.
  16. Corrupt agreements by attorneys, &c. in order to obtain demands for collection by suits at law.
  17. Extortion of illegal fees.
  18. Compounding offences, which are punishable with death or imprisonment for life.
  19. Compounding other felonies.
  20. Officers refusing to execute processes in criminal cases.
  21. Suffering a person, convicted of a capital felony, to escape.

- SECT. 22.** Escape of a person charged with a capital felony.
23. Voluntary escapes in other criminal cases.
  24. Negligent escapes, and refusing to receive prisoners.
  25. Furnishing means or otherwise aiding an escape. Rescued.
  26. Refusing to assist officers, when required.
  27. Refusing to obey justices of the peace, on view of any breach of the peace, &c.
  28. Falsely assuming to be a justice of the peace, sheriff or other officer.
  29. Disguising to obstruct the execution of the laws.

CHAP. 158.

**SECTION 1.** If any person, being required to depose the truth on oath or affirmation lawfully administered, shall, wilfully and corruptly, swear or affirm falsely to any material matter in any proceeding in any court of justice, or before any officer thereof, or before any tribunal or officer created by law, or in any proceeding, or in regard to any matter or thing, in or respecting which an oath or affirmation is or may be required or authorized by law, he shall be deemed guilty of perjury; and shall be punished, if the perjury was committed on trial of a capital crime, by imprisonment in the state prison for life, or any term of years not less than ten years; and, if committed in any other case, by imprisonment in the state prison, not less than two years, nor more than ten years.

Definition and punishment of perjury. 1821, 12, § 1. 12 Mass. 274.

**SECT. 2.** If any person shall procure another to commit perjury, he shall be deemed guilty of subornation of perjury; and shall be punished in the same manner, as if he had himself committed such perjury.

Subornation of perjury. 1821, 12, § 2.

**SECT. 3.** If any person shall, wilfully and corruptly, endeavor to incite or procure another to commit perjury, though no perjury be committed, he shall be punished by imprisonment in the state prison, not more than five years.

The like attempt, when perjury is not committed. 1821, 12, § 3.

**SECT. 4.** Whenever it shall appear to any court of record, that any witness or party, who has been legally sworn and examined or given his affidavit in any proceeding before such court, has testified in such a manner, as to raise a reasonable presumption, that he has been guilty of perjury therein, such court may immediately commit such witness or party to prison by an order or process for such purpose, or take recognizance with sureties for his appearance to answer to an indictment for perjury.

Proceedings by any court on presumption of perjury before such court.

**SECT. 5.** Such court shall thereupon bind over the witnesses to establish such perjury, if present, to appear at the proper court; and may, by order, detain, so long as necessary, any papers or documents, which may have been produced, and which shall be deemed necessary to be used in the prosecution for such perjury; and notice of the proceedings had in relation thereto, mentioned in this and the preceding section, shall be given to the attorney general.

Witnesses in such case recognized, and papers detained.

**SECT. 6.** If any person shall give, offer or promise to any exec-

Bribery of public officers.

juror, or appointed arbitrator, umpire or referee, or if any master in chancery, or auditor or appraiser as aforesaid, shall corruptly take or receive any valuable consideration or gratuity whatever, to give his verdict, award or report in favor of any particular party, or shall knowingly receive any gift or gratuity from any party to any suit, cause or proceeding for the trial of which such juror shall have been summoned, appointed or sworn, or, for the hearing or decision of which, such person shall have been summoned, or appointed or chosen, as aforesaid, he shall be punished by imprisonment in the state prison, not more than five years, or by a fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year.

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bribes by such persons.

SECT. 12. If either of the parties offending in any manner, described in the six preceding sections, shall give information under oath against the [other] party so offending, and shall duly prosecute the same, he shall be exempted from the disqualifications and punishments therein provided.

The party informing exempted from punishment. 1821, 21, § 3.

SECT. 13. Any person, who shall attempt improperly to influence any juror, in a civil or criminal cause, or any one drawn, or summoned or appointed, or sworn as such juror, or any arbitrator or referee, in relation to any cause or matter, pending in or to be brought before the court, for which such juror shall have been drawn or summoned, or appointed or sworn, or, for the hearing and decision of which, such arbitrator or referee shall have been chosen or appointed, shall be punished by a fine, not exceeding two hundred dollars, or by imprisonment in the county jail, not more than three months.

Attempt to corrupt jurors or referees.

SECT. 14. If any person, drawn, summoned or sworn as a juror, shall make any promise or agreement to give a verdict for or against any person in a civil or criminal case, or shall receive any paper, evidence or information from any one in relation to any matter or cause, for the trial of which he shall be sworn, without the authority of the court or officer before whom such cause or matter shall then be pending, and without immediately disclosing the same to the said court or officer, he shall be punished by a fine, not exceeding two hundred dollars, or by imprisonment in the county jail, not more than three months.

Misconduct of jurors.

SECT. 15. If any sheriff, deputy sheriff, constable or coroner, shall receive, from a defendant or any other person, any money or other valuable thing, as a consideration or inducement for omitting or delaying to arrest any defendant, or to carry him before a magistrate or to prison, or for postponing, delaying or neglecting the sale of property on execution, or for omitting or delaying to perform any other duty pertaining to his office, he shall be punished by fine, not exceeding three hundred dollars, or by imprisonment in the county jail, not more than three months.

Sheriffs, &c. receiving bribes for neglect of official duties.

SECT. 16. If any attorney, justice of the peace, sheriff, deputy sheriff, coroner or constable, shall loan or advance, or promise to loan or advance any money, or shall give or promise to give day of payment of any money due on any demand, left with him for collection, or shall give or promise any valuable consideration, or shall become liable, in any manner whatever, for the payment of money or other thing, or shall become surety for another for such

Corrupt agreements by attorneys, &c. in order to obtain demands for collection by suits at law. 1821, 20. 1824, 256. 13 Pick. 79.

**SECT. 22.** If any jailer or other officer shall voluntarily suffer any prisoner in his custody, upon charge of a capital felony, to escape, he shall be punished by imprisonment in the state prison, not less than five years, and not more than fifteen years.

**SECT. 23.** If any jailer or other officer shall, voluntarily, suffer any prisoner in his custody, upon charge or conviction of any felony or any other criminal offence, not capital, to escape, he shall suffer the like punishment and penalties, as the prisoner, so suffered to escape, was sentenced to, or would be liable to suffer, upon conviction of the offence, wherewith he stood charged.

**SECT. 24.** If any jailer or other officer shall, through negligence, suffer any prisoner in his custody for any criminal offence to escape, or shall wilfully refuse to receive into his custody any prisoner, lawfully committed thereto, on any criminal charge or conviction, or on any lawful process whatever, he shall be punished by imprisonment in the county jail not more than two years, or by fine, not exceeding five hundred dollars.

**SECT. 25.** If any person shall convey into any jail, or other place of confinement, any disguise, instrument, arms or other thing, proper or useful to aid any prisoner in making his escape, and with intent to facilitate the escape of any prisoner there lawfully detained for any criminal offence, whether such escape be effected or attempted or not, or shall, by any means, aid or assist any such prisoner to escape, whether such escape be effected or not, or shall forcibly rescue any prisoner held in custody for any criminal offence, he shall be punished, when such prisoner was imprisoned or in custody for any felony, by imprisonment in the state prison, not more than seven years; and, when such prisoner was imprisoned or in custody for any offence, not a felony, by imprisonment in the county jail, not more than one year, or by fine not exceeding five hundred dollars.

**SECT. 26.** If any person, being required, in the name of the state, by any sheriff, deputy sheriff, coroner or constable, shall neglect or refuse to assist any of them in the execution of their office, in any criminal case, or in the preservation of the peace, or the apprehending and securing any person for a breach of the peace, or in any escape or rescue of persons arrested on civil process, he shall be punished by imprisonment in the county jail, not more than thirty days, or by fine, not exceeding fifty dollars.

**SECT. 27.** If any justice of the peace, upon view of any breach of the peace, or any other offence proper for his cognizance, shall require any person to apprehend and bring before him the offender therein, every person so required, who shall refuse or neglect to obey such justice, shall be punished as provided in the preceding section; and no person, to whom such justice shall be known, or shall declare himself to be a justice of the peace, shall be permitted to plead any excuse on pretence of ignorance of his office.

**SECT. 28.** If any person shall falsely assume to be a justice of the peace, sheriff, deputy sheriff, coroner or constable, and shall take upon himself to act as such, or to require any one to aid or assist him in any matter pertaining to the duty of any such office, he shall be punished by imprisonment in the county jail, not more than one year, or by fine, not exceeding four hundred dollars.

**CHAP. 158.**

Escape of a person, charged with a capital felony.

1829, 430, § 6.

Voluntary escapes, in other criminal cases.

1821, 110, § 11.

Negligent escapes, and refusing to receive prisoners.

1821, 110, § 12.

Furnishing means, or otherwise aiding an escape. Rescue.

1821, 110, § 13.

Refusing to assist officers, when required.

1821, 92, § 7.

Refusing to obey justices of the peace, on view of any breach of the peace, &c.

1821, 76, § 5.

Falsely assuming to be a justice of the peace, sheriff, or other officer.

1821, 92, § 8.

6 Greenl. 281.

**SECT. 4.** Any person, guilty of unlawfully assembling or of a riot, may alone be indicted and convicted thereof; provided, it be alleged in the indictment, and proved on trial, that three or more persons were engaged therein; and, if known, they must be named, or, if unknown, that fact must be alleged.

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One person may be convicted without the others.

**SECT. 5.** If any persons, to the number of twelve or more, any of them being armed with clubs or other dangerous weapons, or if any persons, to the number of thirty or more, whether armed or not, shall be unlawfully, riotously or tumultuously assembled in any city or town, it shall be the duty of the mayor and each of the aldermen of such city, and of each of the selectmen and constables of such town, and every justice of the peace living in such town, and also of the sheriff of the county and his deputies, to go among the persons so assembled, or as near to them, as may be with safety, and, in the name of the state, to command all persons, so assembled, immediately and peaceably to disperse; and, if the persons so assembled shall not thereupon immediately and peaceably disperse, it shall be the duty of each of said magistrates and officers to command the assistance of all persons then present, in arresting and securing in custody, the persons so unlawfully assembled, so that they may be proceeded with, according to law.

Duty of magistrates, sheriffs, &c. when there is an unlawful assembly of twelve or more persons.  
1821, 17, § 1.

**SECT. 6.** If any person shall refuse to assist in arresting the persons so unlawfully assembled, or shall refuse immediately to disperse, upon being commanded so to do, as mentioned in the preceding section, he shall be deemed one of such unlawful or riotous assembly, and shall be punished by fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year.

Refusal to assist in arresting offenders, or to disperse, if commanded.  
1821, 17, § 1.

**SECT. 7.** If any such magistrate or other officer, having notice of any such unlawful or tumultuous assembly, in the city or town where he dwells, shall refuse or neglect immediately to execute his duty, in relation thereto, as provided in the fifth section of this chapter, he shall be punished by a fine, not exceeding three hundred dollars.

Neglect of duty by magistrates or other officers.

**SECT. 8.** If any persons, so riotously or unlawfully assembled, shall, upon command as aforesaid, refuse or neglect to disperse without unnecessary delay, any two of the magistrates or officers, before mentioned, may require the aid of a sufficient number of persons, in arms or otherwise, and shall proceed in such manner as they may judge expedient, to suppress such riotous or tumultuous assembly, and to arrest and secure the persons composing the same, that they may be proceeded with according to law.

Power of magistrates, &c. if persons assembled do not disperse.

**SECT. 9.** When an armed force shall be called out, as provided in the preceding sections, they shall obey such orders for suppressing such unlawful and riotous assembly, and for arresting and dispersing the persons engaged therein, as they may receive from the governor, or any judge of a court of record, or the sheriff of the county, or from any two of the magistrates or officers, mentioned in the fifth section.

Duty of an armed force, if called out on such an occasion.

**SECT. 10.** If, by reason of any efforts, made as before mentioned, to suppress such riotous and unlawful assembly, or to arrest and secure the persons composing the same, who have refused to disperse, though the number remaining be less than twelve, any

If any person be killed or wounded, magistrates and officers held guiltless. Liability of the persons unlaw-

- SECT. 19. Obscene books and pictures.**  
 20. Warrants to search for such books, &c.  
 21. Blasphemy.  
 22. Profanity.  
 23. Disturbing public worship.  
 24. Offenders to be apprehended and detained.  
 25. Rudeness on the Lord's day in houses of worship.  
 26. Business, traveling and recreation on the Lord's day prohibited.  
 27. Restrictions on innholders, retailers, &c. on the Lord's day.  
 28. When the Lord's day begins and ends, constructively.  
 29. Public amusements, &c. prohibited on the evenings of Saturday and Sunday.

- SECT. 30. Persons conscientiously observing the seventh day, as the sabbath.**  
 31. What officers shall prosecute for violation of the Lord's day.  
 32. Unauthorized disinterment, or improper exposure or abandonment of dead bodies.  
 33. Arrest of the body of a deceased person, prohibited.  
 34. Injury to monuments and places of sepulture.  
 35. Cruelty to animals.  
 36. Drunkenness.  
 37. Houses resorted to, for gaming.  
 38. Gaming, and betting on persons playing at cards, &c.  
 39. Justices of the peace may issue warrants to search gaming houses, and to arrest the keepers thereof for trial.

**CHAP. 160.**

**SECTION 1.** Every person, who shall commit the crime of adultery, shall be punished by imprisonment in the state prison, not more than five years; and, when the crime is committed between parties, only one of whom being married, both shall be deemed guilty of adultery, and shall be punished accordingly.

Adultery.  
 1821, 10, § 1.  
 21 Pick. 509.

**SECT. 2.** If any persons, having been legally divorced from the bonds of matrimony, shall afterwards live and cohabit together, each of them shall be deemed guilty of adultery.

Cohabitation by parties divorced.  
 1821, 71, § 6.

**SECT. 3.** Persons being within the degrees of consanguinity or affinity, within which marriages are declared to be incestuous and void, as provided in the eighty seventh chapter, who shall intermarry or commit fornication or adultery with each other, shall be punished by imprisonment in the state prison, not more than ten years.

Incest.

**SECT. 4.** If any person shall be convicted of the detestable crime against nature, committed with mankind or with a beast, such offender shall be punished by imprisonment in the state prison, not more than ten years.

Crime against nature.  
 1821, 5.

**SECT. 5.** Every person, having a husband or wife living, who shall marry any other person, whether married or single, shall, except in the cases specified in the following section, be deemed guilty of polygamy, and be punished by imprisonment in the state prison, not more than five years, or by a fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year.

Polygamy.  
 1821, 10, § 2.  
 6 Greenl. 148.

**SECT. 6.** The preceding section shall not extend to any person, whose husband or wife shall have been continually absent for seven years, without being known to such person to be living within that time; nor to any person, who, at the time of such marriage, shall, at his or her own instance or application, have been divorced by a decree of a competent court.

Excepted cases.  
 1821, 10, § 2.  
 1834, 116, § 3.  
 1837, 292, § 3.  
 1 Pick. 136, 506.

**SECT. 7.** The indictment against any person for polygamy, may be found in the county, where such person may reside or be apprehended; and the same proceedings be had therein, as if the offence had been committed in that county.

In what county indictment may be found.



holding a license : and every person, so abiding, drinking and spending his time, shall be punished by a fine, not exceeding four dollars for each offence. CHAP. 160.

**SECT. 28.** For the purposes of the provisions of the two preceding sections, the Lord's day shall be construed to include the time, between the midnight preceding, and the sun setting of, the same day. When the Lord's day begins and ends, constructively. 1821, 9, § 4.

**SECT. 29.** If any person, on the evening preceding or following the Lord's day, shall be present at any dancing or other public diversion, except concerts of sacred music, or shall then use any sport, game or recreation, or if any innholder, retailer or keeper of a public house, shall then suffer to abide and remain in his house or places appurtenant, any persons drinking, or spending their time idly or at play, such persons not being travelers, strangers, or lodgers in such house, shall be punished by a fine, not exceeding three dollars. Public amusements, &c. prohibited on the evenings of Saturday and Sunday. 1821, 9, § 5.

**SECT. 30.** No person, who conscientiously believes that the seventh day of the week ought to be observed, as the sabbath, and actually refrains from secular business and labor on that day, shall be liable to the said penalties for performing secular business and labor on the Lord's day, or first day of the week ; provided, he disturbs no other persons. Persons conscientiously observing the seventh day, as the sabbath.

**SECT. 31.** It shall be the duty of all tythingmen, to take notice of, and to prosecute for all offences violating the Lord's day, as described in the twenty fifth, twenty sixth, twenty seventh and twenty ninth preceding sections ; and the same may be prosecuted, either in the district court, or, when the fine or fines shall not exceed ten dollars, by complaint before a justice of the peace ; provided, the indictment be found or complaint be made, within six months next after the commission of the offence. What officers shall prosecute for violations of the Lord's day. 1821, 9, § 6, 12, 13. 13 Mass. 324.

**SECT. 32.** If any person, without the permission of the board of health, selectmen or overseers of the poor of any town, or the mayor or aldermen of any city, or other legal authority, shall wilfully dig up, disinter, remove or carry away any human body or the remains thereof from its place of interment, or aid or assist in so doing, or shall wilfully receive, conceal or dispose of any such human body or the remains thereof, or if any person shall wilfully and unnecessarily, and in an improper manner, indecently expose, throw away or abandon any human body or the remains thereof, in any public place or in any river, stream or other place, every such offender shall be punished by imprisonment in the county jail, not more than one year, or by fine, not exceeding one thousand dollars. Unauthorized disinterment, or improper exposure, or abandonment of dead bodies. 1821, 15, § 1, 2. 1 Greenl. 226. 8 Pick. 370. 10 Pick. 37.

**SECT. 33.** If any officer shall take the body of any deceased person by any writ or execution, he shall be punished by a fine, not exceeding five hundred dollars, or by imprisonment in the county jail, not more than six months. Arrest of the body of a deceased person prohibited. 1821, 16.

**SECT. 34.** If any person shall wilfully destroy or injure any tomb, grave stone, monument or other thing, placed or designed as a memorial of the dead, or any fence, railing or other thing placed about the same, or any place inclosed for the burial of the dead, or shall wilfully destroy, injure, or remove any tree, shrub or plant within such inclosure, he shall be punished by imprisonment in the Injury to monuments, and places of sepulture.

## CHAPTER 161.

CHAP. 161.

## OF CHEATING BY FALSE PRETENCES, GROSS FRAUDS AND CONSPIRACY.

SECT. 1. Cheating by false pretences.

2. Parties to fraudulent conveyances, or to the use thereof.

3. Suppression of last wills and testaments.

4. Gross frauds at common law.

5. Fraudulent destruction of vessels.

6. Fitting them out for such purpose.

SECT. 7. Making false bills of lading and other exhibits of property, shipped.

8. False affidavits and protests.

9. Persons burning their own property to defraud insurers.

10. Conspiracy to prosecute an innocent person.

11. Conspiracies in other cases.

SECTION. 1. If any person, designedly and by any false pretence, or by any privy or false token, and with intent to defraud, shall obtain from another any money, goods or other property, or shall so obtain the signature of any person to any written instrument, the false making of which would be punishable as forgery, he shall be punished by imprisonment in the state prison, not more than seven years, or by fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year.

Cheating by false pretences. 1821, 13, § 1. 4 Pick. 177. 21 Pick. 515.

SECT. 2. Any person, knowingly being a party to any conveyance or assignment of any estate or interest in lands, goods or things in action, or of any rents or profits arising therefrom, or being a party to any charge on such estate, interest, rents or profits, made or created, with intent to defraud prior or subsequent purchasers, or to hinder, delay or defraud creditors or other persons, and every person, being privy to, or knowing of such fraudulent conveyance, assignment or charge, who shall willingly put the same in use, as having been made in good faith, shall be punished by a fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year.

Parties to fraudulent conveyances, or to the use thereof. 1835, 195, § 13.

SECT. 3. If any person, having in his possession, or under his control, any last will and testament of a person deceased, shall wilfully suppress, secrete, deface or destroy the same, with intent to injure or defraud any devisee, legatee or other person, he shall be punished by imprisonment in the state prison, not more than seven years, or by fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year.

Suppression of last wills and testaments.

SECT. 4. Every person, who shall be convicted of any gross fraud or cheat at common law, shall be punished as provided in the preceding section.

Gross frauds at common law. 1821, 13, § 2.

SECT. 5. If any person shall wilfully cast away, burn, sink or otherwise destroy any ship or vessel within any county in this state, with intent to injure or defraud any owner of such vessel, or the owner of any property laden on board the same, or any insurer of such vessel or property, or of any part thereof, he shall be punished by imprisonment in the state prison, for life or any term of years, not less than five years.

Fraudulent destruction of vessels. 1821, 14, § 1.

SECT. 6. If any person shall lade, equip or fit out or assist in lading, equipping or fitting out any ship or vessel, with intent that the same shall be wilfully cast away, burnt, sunk or otherwise destroyed, to injure or defraud any owner or insurer of such vessel,

Fitting them out for such purpose. 1821, 14, § 2.

fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year. CHAP. 161.

## CHAPTER 162.

### OF MALICIOUS MISCHIEF AND TRESPASSES ON PROPERTY.

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| <p><b>SECT. 1.</b> Maliciously killing or injuring horses or cattle.</p> <p><b>2.</b> Injuries to dams, canals, machinery, ponds, engines, &amp;c.</p> <p><b>3.</b> Bridges and roads.</p> <p><b>4.</b> Booms, rafts, vessels, &amp;c.</p> <p><b>5.</b> Trees and shrubs.</p> <p><b>6.</b> Fences, gates or bars.</p> <p><b>7.</b> Produce on lands, and things attached thereto.</p> <p><b>8.</b> Monuments, marked trees, mile stones, guide boards, sign boards, lamps and lamp posts.</p> <p><b>9.</b> Timber, or wood standing; earth or stone; produce on lands; goods on wharves or landing places.</p> | <p><b>SECT. 10.</b> Stones and gravel, taken by surveyors of highways, excepted.</p> <p><b>11.</b> Trespases on gardens, orchards, or improved lands, with intent to take, carry away, &amp;c.</p> <p><b>12.</b> Passing through gardens, &amp;c. after prohibition.</p> <p><b>13.</b> Wilful injuries to buildings, fixtures, goods or valuable papers of another.</p> <p><b>14.</b> Limitation of prosecutions.</p> <p><b>15.</b> Jurisdiction of justices of the peace.</p> |
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**SECTION 1.** If any person shall, wilfully, maliciously or cruelly, kill, wound, maim or disfigure the horses, cattle, or any other beast of another, or shall, wilfully and maliciously, administer poison to any such animal, or shall expose any poisonous substance, with intent that the same should be taken and swallowed by them, he shall be punished by imprisonment in the state prison, not more than four years, or by fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year. Maliciously killing or injuring horses or cattle. 1821, 4, § 4.

**SECT. 2.** If any person shall maliciously or wantonly break down, injure, remove or destroy any dam, reservoir, canal, trench or any of the appurtenances thereof, or any of the gear or machinery of any mill or manufactory, or shall maliciously or wantonly draw off the water from any mill pond, reservoir, canal or trench, or destroy, injure or render useless any engine or the apparatus thereto belonging, prepared and kept for the extinguishment of fires, he shall be punished by imprisonment in the state prison, not more than three years, or by a fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year. Injuries to dams, canals, machinery, ponds, engines &c. 1821, 27.

**SECT. 3.** If any person shall, wilfully and maliciously, break down, injure, remove or destroy any public or toll bridge, or rail road, or place any obstruction on such bridge, rail road or any public road, with intent that any person or property passing on the same, should be injured thereby, he shall be punished by imprisonment in the state prison, not more than three years, or by fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year. Bridges and roads.

**SECT. 4.** If any person shall, wilfully or maliciously, without the consent of the owner, cut away, let loose, injure or destroy, any Booms, rafts, vessels, &c. 1834, 98, § 1.

through any garden, yard, or other improved field, after having been expressly forbidden so to do by the owner or occupant thereof, he shall be punished by a fine, not exceeding five dollars, or imprisonment in the county jail, not more than ten days.

**SECT. 13.** If any person shall, wilfully or maliciously, injure, destroy or deface any building or fixture attached thereto, not having the consent of the owner thereof, or, wilfully or maliciously, destroy, injure or secrete any goods or chattels, or valuable papers of another, he shall be punished by imprisonment in the county jail, not more than one year, or by a fine, not exceeding five hundred dollars; and shall also be liable to the party injured, in a sum equal to three times the value of the property, so destroyed or injured, in an action of trespass.

**SECT. 14.** All prosecutions for offences mentioned in this chapter, after the fourth section, shall be commenced within four years from the time the offence shall have been committed.

**SECT. 15.** Every justice of the peace, in his proper county, shall have jurisdiction of the offences described in this chapter, after the fourth section, where the property so destroyed, or the injury occasioned by the trespass, shall not be alleged to exceed the sum of ten dollars, in which case the punishment shall be by fine, not exceeding ten dollars, or imprisonment in the county jail, not more than thirty days; saving to the party convicted the right of appeal, according to law.

**CHAP. 162.**  
gardens, &c. after prohibition.

Wilful injuries to buildings, fixtures, goods, or valuable papers of another.  
1825, 312.

Limitation of prosecutions.  
1825, 312, § 2.

Jurisdiction of justices of the peace

## CHAPTER 163.

### OF OFFENCES AGAINST THE PUBLIC HEALTH, SAFETY AND POLICY.

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| <p><b>SECT. 1.</b> Selling unwholesome provisions.<br/>2. Adulterating food or liquors.</p> | <p><b>SECT. 3.</b> Selling or giving away preparations for fireworks, or setting fire to them, in towns.<br/>4. Lotteries.</p> |
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**SECTION 1.** If any person shall sell any diseased, corrupted or unwholesome provisions, whether for meat or drink, knowing the same to be such, without making it known to the buyer, he shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year.

**SECT. 2.** If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits, malt liquor or other liquor intended for drink, in such manner as to render the same injurious to health, he shall be punished, as provided in the preceding section.

**SECT. 3.** If any person shall sell, offer for sale or give away any fireworks, called crackers, squibs, rockets or other fireworks, or shall set fire to, or throw the same in any town or city, without the license of the selectmen of such town, or the mayor or aldermen of such city, he shall be punished by a fine, not exceeding ten dollars,

Selling unwholesome provisions.  
1821, 23.

Adulterating food or liquors.

Selling or giving away preparations for fireworks, or setting fire to them in towns.  
1821, 26.

**SECT. 2.** The selectmen of any town, or the mayor and aldermen of any city, may, when they judge it necessary, assign some certain place or places in such town or city, for the exercise of any trade, employment or manufacture, injurious as aforesaid, to the health, comfort, or property of individuals or the public, and forbid the exercise of them in places not so assigned, under penalty of their being deemed public or common nuisances, and liable to be prosecuted and abated as such. All such assignments shall be entered in the records of such town or city, and may be revoked, when said town or city officers shall judge proper.

**SECT. 3.** When any place or building, so assigned, shall become a nuisance, offensive to the neighborhood, or injurious to the public health, any person may make complaint thereof to the district court, and if, after notice to the party complained of, the truth of said complaint shall be admitted by the defendant by default, or otherwise made to appear to a jury on trial, the court may revoke such assignment, and prohibit the further use of such place or building for the offensive purposes aforesaid, under a fine, not exceeding one hundred dollars, for each month the same shall be so continued after such prohibition, to be recovered on indictment, to the use of said town or city; and may order the same to be abated, and issue a warrant therefor, or stay the same, as hereafter provided: and, if the jury on said trial shall acquit the defendant, he shall recover his costs of the complainant.

**SECT. 4.** If any person shall carry on the business of manufacturing gun powder, or of mixing or grinding the composition therefor, in any building within eighty rods from any valuable building, erected at the time when such business may be commenced, the building, in which such business may be carried on as aforesaid, shall be deemed a public nuisance; and such person shall be liable to be prosecuted and indicted accordingly.

**SECT. 5.** Any city or town, at their annual meeting, may prohibit, by a vote, the burning of any bricks, or the erecting of any brick kiln for the purpose of burning the same, within such parts of said city or town, as they may deem for the safety of the citizens or their property. And, if any person, by himself or others, shall burn any bricks or erect any brick kiln for that purpose, in any place prohibited as aforesaid, it shall be the duty of the mayor and aldermen of such city, or of the selectmen of such town, to cause said bricks or brick kiln to be forthwith removed, at the expense of the owners thereof; and the offender shall also be further liable on indictment to be punished by a fine, not exceeding two hundred dollars, to the use of said city or town; and, if said bricks or brick kiln shall not have been, before a conviction on such indictment, removed, the court may issue a warrant for the removal of the same, or stay such warrant as hereafter provided.

**SECT. 6.** The erecting and maintaining of water mills, and dams to raise water for working the same, upon or across streams not navigable, as provided in the one hundred and twenty sixth chapter, shall not be deemed nuisances, unless the same shall become offensive to the neighborhood or injurious to the public health, as mentioned in the preceding first section, or unless the

**CHAP. 164.**

Places to be assigned for unwholesome employments. 1821, 24, § 1, 2.

Proceedings, when places, so assigned, become offensive. 1821, 24, § 3.

When buildings for the manufacture of gun powder shall be deemed nuisances. 1834, 96.

Burning bricks in parts of a town prohibited by vote, nuisances. 1827, 353.

Water mills, and dams on streams, and fences and buildings fronting on public ways, in certain cases, not nuisances. 1836, 238, § 1.

legally discharged. And make return of this warrant, with your doings thereon, within thirty days. Witness A. R., Esq., at —, this — day of —, in the year of our Lord, —.

J. S., Clerk.”

And, when the conviction shall be had upon an action before a justice of the peace, and no appeal being made, the said justice, after estimating, as aforesaid, the sum necessary to defray the expense of removing or abating the nuisance, may issue a like warrant, making corresponding alterations in the form thereof.

SECT. 10. Instead of issuing the said warrant, the court or justice may order the same to be stayed, upon motion of the defendant, and upon his entering into recognizance, in such sum and with such surety as the court or justice shall direct, in case of an indictment, to the state, or, in case of a complaint or action, to the plaintiff, conditioned, either that the defendant will discontinue said nuisance, or that, within a time limited by the court, and not exceeding six months, he will cause the same to be abated and removed, as either shall be directed by the court: and, upon his default to perform the condition of the recognizance, the same shall be deemed forfeited, and the said court, or any justice thereof, in term time or in vacation, or said justice of the peace, upon being satisfied of such default, may order such warrant forthwith to issue, and scire facias to issue on said recognizance.

Warrant to be stayed, if defendant give security to discontinue the nuisance.

SECT. 11. The expense of abating a nuisance, by virtue of a warrant, shall be collected by the officer in the same manner as damages and costs are collected on execution; except that the materials of any buildings, fences or other things, that shall be removed as a nuisance, may be first levied upon and sold by the officer, and, if any of the proceeds remain after satisfying the expense of removal, such balance shall be paid by the officer, on demand, to the defendant or the owner of the property levied upon; and, if said proceeds shall not be sufficient to satisfy said expenses, the officer shall collect the residue thereof, as before mentioned. Any person, committed to jail on such warrant, may be admitted to the privilege of the oath for the relief of poor debtors, in the same manner, as if he had been committed on execution. And, if said expense cannot be collected of the defendant, it shall be paid in the same manner, as costs in criminal prosecutions.

Expenses of abatement to be defrayed from the materials, if sufficient, otherwise, as in other cases of execution. 1821, 24, § 2.

SECT. 12. The supreme judicial court may hear and determine, in equity, all matters concerning nuisances, in which there is not a plain, adequate and complete remedy at law; and may direct any fact to be determined by a jury, when they shall deem it necessary. And any court of record, before whom an indictment, complaint or action for a nuisance may be pending, may, in any county, issue an injunction to stay or prevent any such nuisance, and make such orders and decrees for enforcing or dissolving the same, as justice and equity may require.

Equity jurisdiction of the supreme judicial court. Injunction may issue from any court, where a suit for nuisance is pending. 21 Pick. 344.

fied in any manner, as mentioned in the two preceding sections, the same shall be deemed to have been malicious, unless the contrary shall be fully and clearly proved.

CHAP. 165.

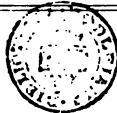
presumed to be malicious. 3 Pick. 304. What constitutes a publication.

SECT. 7. No printing, writing or other thing shall be held to be a libel, unless there shall have been a publication thereof; and the delivery or selling, or reading or otherwise communicating a libel, or causing the same to be delivered, sold, read or otherwise communicated to one or more persons, or to the party libeled, shall be deemed a publication thereof.

SECT. 8. In all indictments for libels, the jury, after having received the direction of the court, shall have a right to determine, at their discretion, the law and the fact.

Jury to determine the law and fact.

CHAPTER 166.



CRIMES AND OFFENCES WITHIN THE JURISDICTION OF DIFFERENT COURTS.

- SECT. 1. Criminal jurisdiction of the supreme judicial court.
- 2. Criminal jurisdiction of the district courts.
- 3. Criminal jurisdiction of justices of the peace, and of municipal and police courts.
- SECT. 4. Offences committed on or near the boundary between two counties.
- 5. Death in one county from an injury in another.
- 6. Death within the state from an injury inflicted without.
- 7. Acquittal of part of an indictment, and conviction of the residue.

SECTION 1. The supreme judicial court shall have exclusive jurisdiction of all crimes punishable with death, or by imprisonment in the state prison for life, or for an unlimited term of years, and of the crimes of misprision of treason, manslaughter, and duelling as described in the sixth, seventh, ninth, tenth, and eleventh sections of the one hundred and fifty fourth chapter, felonious maims and assaults, the crime against nature, adultery, incest, polygamy, the offences of burning buildings, described in the fourth and fifth sections, of the one hundred and fifty fifth chapter, of the offences of forging and counterfeiting, described in the first, second, twelfth, thirteenth, fourteenth, fifteenth and twentieth sections of the one hundred and fifty seventh chapter, and of the offences against public justice, which are severally described in the first ten sections, of the one hundred and fifty eighth chapter.

Criminal jurisdiction of the supreme judicial court. 1823, 233. 1836, 196, § 1.

SECT. 2. The district court shall have exclusive original jurisdiction of all crimes, offences and misdemeanors, with the exception of those mentioned in the preceding section, and of those of which justices of the peace, police and municipal courts, have, by law, original jurisdiction, exclusive, or concurrent with the district court; the said jurisdiction of the district court shall be final, except, that an appeal shall be allowed from the opinion, direction or judgment of said court in matter of law, upon exceptions being filed, as is provided in the ninety seventh chapter.

Criminal jurisdiction of the district courts. 1823, 233. 1836, 196, § 1. 1839, 373, § 1, 5.

SECT. 3. Justices of the peace, police and municipal courts,

Criminal juris-

**SECTION 1.** No person, charged with any offence against the law, shall be punished for the same, unless he shall have been duly and legally convicted thereof in a court having competent jurisdiction of the cause and person. **CHAP. 167.**

Legal conviction to precede punishment.

**SECT. 2.** The term, "felony," when used in any chapter in this title, shall be construed to include murder, rape, arson, robbery, burglary, maims, larceny, and every offence punishable with death or by imprisonment in the state prison.

Of the term, "felony," as used in this title.

**SECT. 3.** Every person, who shall aid and abet in the commission of any felony, or who shall be accessory thereto before the fact, by counseling, hiring, or otherwise procuring the same to be committed, shall be punished in the same manner, which is or shall be prescribed for the punishment of the principal felon.

Accessories before the fact, liable to the same punishment as principals. 13 Mass. 356. 9 Pick. 496. 10 Pick. 477.

**SECT. 4.** Every person, who shall counsel, hire, or otherwise procure any felony to be committed, which shall be committed in consequence thereof, may be indicted and convicted, as an accessory before the fact, either with the principal felon, or after his conviction; or he may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been convicted, or shall or shall not be amenable to justice; and shall, in the last mentioned case, be punished in the same manner, as if convicted of being an accessory before the fact.

Liable to conviction, either with, or without the principal. 1831, 504, § 1. 16 Mass. 423.

**SECT. 5.** Any person, charged with the offence mentioned in the preceding section, may be indicted and convicted in the same court and county, where the principal felon might be indicted and tried, although the offence of counseling, hiring, or otherwise procuring the commission of such felony, may have been committed on the high seas, or on land without the limits of this state; and, if the principal felony be committed in one county, and the offence of being accessory thereto be committed in another county, the last mentioned offence may be indicted, tried and punished in either of said counties.

May be tried either in the county where they became accessory, or where the principal offence was committed. 1831, 504, § 2.

**SECT. 6.** Every person, not standing in the relation of husband or wife, parent or child, to the principal offender, who shall harbor, conceal, maintain or assist any principal felon or accessory, before the fact, to any felony, knowing him to be such, with intent that he shall avoid or escape from detection, arrest, trial or punishment, shall be deemed an accessory after the fact, and shall be punished by imprisonment in the state prison, not more than seven years, or in the county jail, not more than one year, and by fine, not exceeding one thousand dollars; but, in no case, shall such punishment exceed the punishment to which the principal felon, on conviction, would have been liable.

Accessories after the fact. 1831, 504, § 3.

**SECT. 7.** Every person, who shall be accessory after the fact to any felony, may be indicted, tried and sentenced in any court or county, having jurisdiction of the principal offence, whether the principal felon shall or shall not have been convicted, or shall or shall not be amenable to justice; and, if the principal felony shall be committed in one county, and the offence of being accessory after the fact in another county, the last mentioned offence may be indicted, tried and punished in either county.

May be tried, without conviction of the principal. Where to be tried. 1831, 504, § 3.

**SECT. 8.** In the prosecution of any offence committed upon, in

Explanation of



shall be found within six years after the offence shall have been committed; provided, that the offender shall not flee from justice; and that no other limitation for the prosecution of such offender is provided by law; but any period, during which the party charged was not usually and publicly resident within this state, shall not be reckoned as a part of the said six years.

CHAP. 167.  
1839, 362.  
1840, 11.

**CHAPTER 168.**

**OF SENTENCE AND EXECUTION THEREOF IN CRIMINAL CASES.**

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| <p><b>SECT. 1.</b> What sentence to be passed, when none is provided by statute.</p> <p><b>2.</b> Where imprisonment may be either in the county jail, or house of correction.</p> <p><b>3.</b> Conditional sentence, to pay fine and costs, or be sent to the house of correction in ten days.</p> <p><b>4.</b> When sentence may be either fine or imprisonment, or both.</p> <p><b>5.</b> Sureties to keep the peace, &amp;c. required in some cases of conviction.</p> <p><b>6.</b> Minutes made by the clerk, when sufficient authority for the officer.</p> | <p><b>SECT. 7.</b> Removal of convicts to the state prison, upon sentence.</p> <p><b>8.</b> Convicts under sentence of death, to be also sentenced to labor in the state prison, in the mean time.</p> <p><b>9.</b> Execution not to take place within one year. Warrant of the executive therefor.</p> <p><b>10.</b> How sentence of death shall be executed.</p> <p><b>11.</b> Sheriff and certain designated persons to be present.</p> <p><b>12.</b> Sheriff's return to be made and filed in the office of secretary of state.</p> |
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**SECTION 1.** When a person shall be legally convicted of any offence, for the punishment of which no provision is made by statute, the court shall award such sentence as is conformable to the common usage and practice in this state, according to the nature of the offence, and not repugnant to the constitution.

What sentence to be passed, when none is provided by statute.  
1821, 54, § 1.

**SECT. 2.** Any person convicted before the supreme judicial court or district court, of any crime or offence punishable, in part or in whole, by imprisonment in the county jail, may be sentenced to suffer imprisonment, either in the county jail or house of correction at their discretion, to be employed and kept at work there, in the same manner as rogues, vagabonds, and idlers are by law to be employed, when committed to such house.

Where imprisonment may be either in the county jail, or house of correction.  
1821, 111, § 7.

**SECT. 3.** Either of said courts may sentence any person, convicted of any offence mentioned in the preceding section, conditionally, to pay a fine with costs of prosecution, or, in case he do not pay the same within ten days, that he be immediately thereafter conveyed to the house of correction, and there be kept at work as aforesaid, for a term, not exceeding six months.

Conditional sentence, to pay fine and costs, or to be sent to the house of correction in ten days.  
1821, 111, § 8.

**SECT. 4.** Whenever it is provided that an offender shall be punished by imprisonment and a fine, the court may sentence him to either of those punishments without the other, or to both.

When sentence may be either fine or imprisonment, or both.

**SECT. 5.** Every court, before whom any person shall be convicted of an offence, not punishable by death or confinement in the state prison, may, in addition to the punishment by law prescribed, require such person to recognize to the state, with suffi-

Sureties to keep the peace, &c. required in some cases of conviction.

shall place the same on file with the indictment, and subjoin to the record of the sentence a brief abstract of the sheriff's return on the warrant. CHAP. 168.

## CHAPTER 169.

### OF PROCEEDINGS FOR PREVENTION OF CRIMES.

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| <p><b>SECT. 1.</b> Of the commencement of criminal proceedings.</p> <p><b>2.</b> Magistrates may require sureties for the peace and good behavior.</p> <p><b>3.</b> Of the examination of the complainant.</p> <p><b>4.</b> When a warrant may issue.</p> <p><b>5.</b> In certain cases sureties required, for keeping the peace, &amp;c. without binding to appear at any court.</p> <p><b>6.</b> Party to be discharged, on complying.</p> <p><b>7.</b> On refusal, to be committed to the county jail; but still entitled to a hearing on his appeal.</p> <p><b>8.</b> Proceedings, if the complaint be not sustained. Costs, if malicious or frivolous.</p> | <p><b>SECT. 9.</b> When party, complained of, shall pay costs.</p> <p><b>10.</b> Appeal to the next district court.</p> <p><b>11.</b> Proceedings upon the appeal.</p> <p><b>12.</b> Consequences, if the appellant fail to prosecute.</p> <p><b>13.</b> Recognizance may be taken, after commitment.</p> <p><b>14.</b> Return of such recognizance.</p> <p><b>15.</b> When magistrate may require sureties, without a formal complaint.</p> <p><b>16.</b> Persons going armed, without reasonable cause.</p> <p><b>17.</b> Power of court, to remit the penalty of a recognizance.</p> <p><b>18.</b> Sureties on recognizances may surrender their principals, as in case of bail in civil actions.</p> |
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**SECTION 1.** No person shall be held to answer in any court for an alleged crime or offence, other than contempt of court, unless upon an indictment by a grand jury, except in the following cases: Of the commencement of criminal proceedings.

*First.* When a prosecution by information is expressly authorized by statute.

*Second.* In proceedings before a municipal or police court, or a justice of the peace.

*Third.* In proceedings before courts martial.

**SECT. 2.** The justices of the supreme judicial court, of the district court, justices of municipal courts and police courts in vacation, as well as in open court, and justices of the peace, in their respective counties, shall have power to cause all laws made for the preservation of the public peace to be kept; and, in the execution of that power, may require persons to give security to keep the peace, or be of the good behavior, or both, in the manner provided in this chapter. Magistrates may require sureties for the peace and good behavior.

**SECT. 3.** Any such magistrate, on complaint made to him, that any person has threatened to commit an offence against the person or property of another, shall examine the complainant on oath, and also any witnesses who are produced, and reduce the complaint to writing, and cause the complainant to subscribe the same. Of the examination of the complainant.

**SECT. 4.** If there should appear to such magistrate, on an examination of the facts, that there is just cause to apprehend and fear the commission of such offence, he shall issue a warrant under his hand and seal, containing a recital of the substance of the com- When a warrant may issue. 1821, 76, § 1.

refusing to recognize, as required by the court or magistrate, may be discharged by any judge or justice of the peace, on giving such security, as was required. **CHAP. 169.**

**SECT. 14.** Every recognizance, taken pursuant to the foregoing provisions, shall be transmitted to the district court, on or before the first day of the next ensuing term, and shall there be filed by the clerk, as of record. may be taken after commitment. Return of such recognizance.

**SECT. 15.** Whoever, in the presence of any magistrate, mentioned in the second section of this chapter, or before any court of record, shall make any affray or threaten to kill or beat another, or commit any violence against his person or property, or shall contend, with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace, or being of the good behavior for a term, not exceeding three months, and, in case of refusal, may be committed to prison as before directed. When magistrate may require sureties, without a formal complaint, &c.

**SECT. 16.** Any person, going armed with any dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without a reasonable cause to fear an assault on himself, or any of his family or property, may, on the complaint of any person having cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace for a term, not exceeding one year, with the right of appeal as before provided. Persons going armed, without reasonable cause. 1821, 76, § 1.

**SECT. 17.** In a suit, on such recognizance taken in a criminal case, if a forfeiture is found or confessed, the court, on petition, may remit the penalty, or such part of it as they may think proper, on such terms as they may think right. Power of court, to remit the penalty of a recognizance. 1821, 50, § 4.

**SECT. 18.** Any surety in a recognizance may surrender the principal in the same manner, as if he had been his bail in a civil cause, and, on such surrender, shall be discharged from all liability for any act of the principal after such surrender, which would be a breach of the recognizance; and, upon such surrender, the principal may recognize anew with sufficient surety or sureties for the residue of the term, before any justice of the peace, and shall thereupon be discharged. Sureties on recognizances may surrender their principals as in case of bail in civil actions.

## CHAPTER 170.

### OF THE POWER AND PROCEEDINGS OF JUSTICES OF THE PEACE IN CRIMINAL CASES.

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| <p><b>SECT. 1.</b> Justices may require aid, on view, without a warrant.</p> <p><b>2.</b> Their jurisdiction.</p> <p><b>3.</b> When a justice shall issue his warrant.</p> <p><b>4.</b> Examination, on trial, of the party accused.</p> <p><b>5.</b> Of commitment or binding over to a higher court.</p> | <p><b>SECT. 6.</b> Duty of justices, as to arrests, and examinations into treasons, felonies, &amp;c.</p> <p><b>7.</b> Trial and sentence within their jurisdiction.</p> <p><b>8.</b> Respondent may appeal; but required to recognize.</p> <p><b>9.</b> To carry up copies of the case.</p> |
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refusing to recognize, as required by the court or magistrate, may be discharged by any judge or justice of the peace, on giving such security, as was required.

**CHAP. 169.**

may be taken after commitment.

**SECT. 14.** Every recognizance, taken pursuant to the foregoing provisions, shall be transmitted to the district court, on or before the first day of the next ensuing term, and shall there be filed by the clerk, as of record.

Return of such recognizance.

**SECT. 15.** Whoever, in the presence of any magistrate, mentioned in the second section of this chapter, or before any court of record, shall make any affray or threaten to kill or beat another, or commit any violence against his person or property, or shall contend, with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace, or being of the good behavior for a term, not exceeding three months, and, in case of refusal, may be committed to prison as before directed.

When magistrate may require sureties, without a formal complaint, &c.

**SECT. 16.** Any person, going armed with any dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without a reasonable cause to fear an assault on himself, or any of his family or property, may, on the complaint of any person having cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace for a term, not exceeding one year, with the right of appeal as before provided.

Persons going armed, without reasonable cause. 1821, 76, § 1.

**SECT. 17.** In a suit, on such recognizance taken in a criminal case, if a forfeiture is found or confessed, the court, on petition, may remit the penalty, or such part of it as they may think proper, on such terms as they may think right.

Power of court, to remit the penalty of a recognizance. 1821, 50, § 4.

**SECT. 18.** Any surety in a recognizance may surrender the principal in the same manner, as if he had been his bail in a civil cause, and, on such surrender, shall be discharged from all liability for any act of the principal after such surrender, which would be a breach of the recognizance; and, upon such surrender, the principal may recognize anew with sufficient surety or sureties for the residue of the term, before any justice of the peace, and shall thereupon be discharged.

Sureties on recognizances may surrender their principals as in case of bail in civil actions.

**CHAPTER 170.**

**OF THE POWER AND PROCEEDINGS OF JUSTICES OF THE PEACE IN CRIMINAL CASES.**

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| <p><b>SECT. 1.</b> Justices may require aid, on view, without a warrant.</p> <p><b>2.</b> Their jurisdiction.</p> <p><b>3.</b> When a justice shall issue his warrant.</p> <p><b>4.</b> Examination, on trial, of the party accused.</p> <p><b>5.</b> Of commitment or binding over to a higher court.</p> | <p><b>SECT. 6.</b> Duty of justices, as to arrests, and examinations into treasons, felonies, &amp;c.</p> <p><b>7.</b> Trial and sentence within their jurisdiction.</p> <p><b>8.</b> Respondent may appeal; but required to recognize.</p> <p><b>9.</b> To carry up copies of the case.</p> |
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CHAP. 170.	SECT. 10. Proceedings, if he do not prosecute his appeal.	SECT. 13. Power to issue search warrants.
	11. Summoning of witnesses.	14. Form of application.
	12. Justices' power to administer oaths.	15. Form of warrant.
		16. When search may be made in the night time.

Justices may require aid, on view, without a warrant.  
1821, 76, § 1.

SECTION 1. Every justice of the peace, may, as a conservator of the peace, upon view of any affray, riot, assault or battery, within his county, without any warrant in writing, command the assistance of any sheriff, deputy sheriff or constable, and of all other persons present, for suppressing the same, and arresting all who are concerned therein, as provided in this chapter.

Their jurisdiction.  
1821, 76, § 2.

SECT. 2. Every justice of the peace, within his county, may punish by fine, not exceeding ten dollars, all assaults and batteries and other breaches of the peace, declared criminal by any statute or town by law, when the offence is not of a high or aggravated nature; and cause to be stayed and arrested all affrayers, rioters, disturbers and breakers of the peace, and all who go armed offensively to the terror of the people, and such as utter threatening speeches, or are otherwise disorderly and dangerous.

When a justice shall issue his warrant.  
1823, 235, § 1.  
16 Pick. 211.

SECT. 3. When complaint shall be made in due form to any justice of the peace, alleging any offence to have been committed, and praying for a warrant to be issued against the person charged, the justice shall carefully inquire of the complainant on oath, into the circumstances of the case; and, if he shall be satisfied that the person charged committed the offence alleged, he shall issue his warrant.

Examination, or trial of the party accused.  
1821, 76, § 1.

SECT. 4. All persons arrested by process, conformable to the provisions of the constitution, for any of the offences before mentioned, shall be examined by the judge or justice before whom they are brought, and may be tried by him; and, if found guilty, may be required to find sureties for keeping the peace, and be further punished by fine, as before provided.

Of commitment, or binding over to a higher court.  
1821, 76, § 1.

SECT. 5. When the offence is of a high and aggravated nature, the persons, thus arrested and in custody, may be committed or bound over for trial to the court, by law having jurisdiction of the case, as is provided in the one hundred and sixty sixth chapter.

Duty of justices, as to arrests, and examinations into treasons, felonies, &c.  
1821, 76, § 1.  
6 Mass. 347.  
11 Mass. 337.

SECT. 6. Every justice shall cause to be arrested, on proper complaint, all persons, found within his county, charged with any offences, and all persons who, after committing any offence within the county, shall escape out of the same. He shall also examine into all treasons, felonies, high crimes and misdemeanors, and commit or bind over for trial, all persons who appear to be guilty thereof.

Trial and sentence within their jurisdiction.  
1821, 76, § 1.

SECT. 7. He may also try all offences within his jurisdiction, committed in his county, and sentence all persons convicted thereof, according to law, notwithstanding there may be a penalty accruing, in whole or in part, to his own town.

Respondent may appeal, but required to recognize.  
1821, 76, § 3.  
1 Greenl. 230.

SECT. 8. Any person, aggrieved at the sentence of any justice of the peace, or judge of a municipal or police court, may appeal therefrom to the next district court, to be holden in the same county; and the justice or judge shall grant the appeal, and order him to recognize in a reasonable sum, not less than twenty dollars, with sufficient sureties for his appearance, and for prosecuting his

appeal; and he shall stand committed till the order is complied with. CHAP. 170.

SECT. 9. He shall be held to produce a copy of the whole process, and of all writings filed before the justice, at the district court. To carry up copies of the case.

SECT. 10. If he shall not prosecute his appeal, and produce the copies as aforesaid, his default shall be noted upon their record; and the court may order the case to be laid before the grand jury, or may issue an attachment against the body of such appellant and bring him into court, and may then affirm the sentence of the justice, with all additional costs. Proceedings, if he do not prosecute his appeal. 1821, 76, § 3.

SECT. 11. Any justice may issue summonses for witnesses to appear before any judicial court or before himself, or any other justice, in any criminal case; but not for witnesses on the part of the state, except to appear before himself, without the consent of the attorney general or county attorney. Summoning of witnesses. 1821, 76, § 6.

SECT. 12. Every justice of the peace may administer oaths in all cases in which an oath may be required, unless a different provision shall be made by law. Justices' power to administer oaths.

SECT. 13. Any justice of the peace, or other magistrate authorized to issue warrants in criminal cases, may, within the limits of his jurisdiction, issue his warrant to search any house or place for property stolen, embezzled, or obtained by false tokens or pretences, or for forged and counterfeit coins, bank bills, or other writings, or for any tools, machines, or materials, used or designed for making the same, or for any dead body, unlawfully disinterred, carried away, and concealed, and in other cases, and for persons, when such search is authorized by law; which search warrant shall be issued according to the principles and provisions in the three following sections, and not otherwise. Power to issue search warrants.

SECT. 14. The application or complaint for a search warrant, made to the justice or magistrate, shall be in writing, signed by the complainant, and verified by his oath or affirmation. It shall specially designate the house or place to be searched, and the owner or occupant thereof, and the person or thing to be searched for, and shall also substantially allege the offence committed in relation to such person or thing, and that the complainant has probable cause to suspect, and does suspect that the same is concealed in the house or place designated as aforesaid. Form of application. 13 Mass. 296.

SECT. 15. Such justice or magistrate shall thereupon issue his warrant, under his hand and seal, and direct the same to a proper officer, or to any other person by name, for service; and it shall contain a recital of all the essential facts alleged in the complaint, and may be made returnable before the justice or magistrate issuing the same, or before any other justice or magistrate, before whom shall also be directed to be brought, the person or thing searched for, if found, and the person in whose possession or custody the same may be found, to be dealt with according to law. Form of warrant.

SECT. 16. Such warrant shall not authorize the person executing it to search any dwelling house in the night time, unless the justice or magistrate shall be satisfied that it is necessary in order to prevent the escape or removal of the person or property to be searched for, and unless such authority shall be distinctly expressed and given in the warrant. When search may be made in the night time.

appeal; and he shall stand committed till the order is complied with. CHAP. 170.

SECT. 9. He shall be held to produce a copy of the whole process, and of all writings filed before the justice, at the district court. To carry up copies of the case.

SECT. 10. If he shall not prosecute his appeal, and produce the copies as aforesaid, his default shall be noted upon their record; and the court may order the case to be laid before the grand jury, or may issue an attachment against the body of such appellant and bring him into court, and may then affirm the sentence of the justice, with all additional costs. Proceedings, if he do not prosecute his appeal. 1821, 76, § 3.

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SECT. 15. Such justice or magistrate shall thereupon issue his warrant, under his hand and seal, and direct the same to a proper officer, or to any other person by name, for service; and it shall contain a recital of all the essential facts alleged in the complaint, and may be made returnable before the justice or magistrate issuing the same, or before any other justice or magistrate, before whom shall also be directed to be brought, the person or thing searched for, if found, and the person in whose possession or custody the same may be found, to be dealt with according to law. Form of warrant.

SECT. 16. Such warrant shall not authorize the person executing it to search any dwelling house in the night time, unless the justice or magistrate shall be satisfied that it is necessary in order to prevent the escape or removal of the person or property to be searched for, and unless such authority shall be distinctly expressed and given in the warrant. When search may be made in the night time.

CHAPTER 171.

OF COMMENCEMENT OF PROCEEDINGS IN CRIMINAL CASES.

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| <p>SECT. 1. Processes to be issued by certain magistrates.</p> <p>2. Origin of proceedings by complaint and warrant.</p> <p>3. Party accused may be pursued into other counties.</p> <p>4. Power of justices in such other counties, on arrest of the accused, to take recognizances.</p> <p>5. The same to be returned to the proper tribunal.</p> <p>6. If no bail be given, prisoner to be taken to the county, where the process originated.</p> <p>7. Also, if the offence be punishable with death, or confinement in the state prison.</p> <p>8. When examination may be before a justice, other than the one issuing the warrant.</p> <p>9. Adjournment of examination. Recognizance.</p> <p>10. Proceedings, if party fail to appear.</p> <p>11. Commitment for further examination.</p> <p>12, 13. Mode of examination.</p> <p>14. Witnesses may be examined separately.</p> <p>15. Testimony may be taken in writing.</p> <p>16. When the prisoner shall be discharged.</p> | <p>SECT. 17. When to be committed or bailed, or tried.</p> <p>18. Witnesses to recognize to appear at court.</p> <p>19. To recognize with sureties, if required.</p> <p>20. To be committed, on their refusal.</p> <p>21. How married women and minors may be bound to appear.</p> <p>22. Bail may be taken after commitment.</p> <p>23. Justice may associate another justice with him.</p> <p>24. Examinations and recognizances to be returned to the county attorney, or clerk.</p> <p>25. Prosecutions may be discontinued in certain cases, after restitution made for private injuries.</p> <p>26. Discharge in such case to be preserved on file, &amp;c.</p> <p>27. Remedy on recognizances.</p> <p>28. Surety may pay the penalty to the county treasurer or the clerk.</p> <p>29. Court may remit the penalty, either wholly, or in part.</p> <p>30. Certain forms in proceedings deemed unessential, as to recognizances.</p> <p>31. Traverse juries, in certain cases, may be summoned at a law term.</p> |
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Processes to be issued by certain magistrates.

SECTION 1. The justices of the supreme judicial court and of the district court, the judges of municipal courts, police courts and justices of [the] peace in their respective counties, as well in vacation as term time, for the apprehension of persons charged with offences, are authorized to issue process, to carry into effect the provisions of this chapter.

Origin of proceedings, by complaint and warrant. 1823, 235, § 1. 1 Fairf. 473.

SECT. 2. When a complaint is made to any judge of a municipal or police court, or justice of the peace, that a criminal offence has been committed, he shall examine the complainant on oath, and any witnesses he may produce; and, if it shall appear that any such offence has been committed, and that there is reason for believing the person charged to be guilty, the court or justice shall issue a warrant, stating the substance of the charge, and requiring the officer to whom it is directed, forthwith to arrest the person accused, and bring him before such court or justice, or some other magistrate of the county, to be dealt with according to law; and, in the same warrant, may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

Party accused may be pursued into other counties.

SECT. 3. When a person, against whom a warrant has been issued for an alleged offence, committed in any county, shall, before or after issuing the warrant, have removed or escaped from or be



out of the county, the sheriff or deputy to whom the warrant is directed, may pursue and apprehend the party charged in any county in the state; and may, for that purpose, command aid, as in his own county, and convey him into the county, in which the offence was committed. CHAP. 171.  
1824, 244, § 1.

SECT. 4. Where the offence charged in the warrant is not punishable with death or imprisonment in the state prison, the person arrested, if he shall request it, may be carried before any justice of the county in which the arrest was made, for the purpose of entering into a recognizance, without any trial or examination, and it shall be the duty of the officer so to carry him; and the justice may take a recognizance from the person arrested, with sufficient sureties, for his appearance at the next court, or before any justice of the peace having cognizance of the offence in the county where the same is alleged to have been committed; and thereupon the party arrested shall be discharged. Power of justices in such other counties on arrest of the accused, to take recognizance.

SECT. 5. The magistrate, having so taken the recognizance of the party charged, shall certify that fact on the warrant, and deliver the same, with the recognizance, to the person who made the arrest; and it shall be his duty to cause the same to be delivered, without delay, to the clerk of the court before which the person accused was recognized to appear. The same to be returned to the proper tribunal.

SECT. 6. If the magistrate in the county where the arrest was made, shall refuse to let to bail the person arrested and brought before him, or if no sufficient bail be offered, the person, having him in charge, shall take him before some magistrate of the county in which the warrant was issued, to be proceeded with, as hereinafter mentioned. If no bail be given, prisoner to be taken to the county, where the process originated.

SECT. 7. When the offence charged is punishable with death, or by imprisonment in the state prison, the officer making the arrest in some other county, shall convey the prisoner to the county where the warrant was issued, and he shall be proceeded with in the manner directed in the following section. Also if the offence be punishable with death or confinement in the state prison.

SECT. 8. Every person, arrested by warrant for any offence, where no provision is made for his examination thereon, before any other justice of the peace, shall be brought before the magistrate, who issued the warrant; or, if he be absent or unable to attend, before any other magistrate of the same county; and the warrant, with a proper return thereon, signed by the person who made the arrest, shall be delivered to the magistrate. When examination may be before a justice, other than the one issuing the warrant.

SECT. 9. Any magistrate may adjourn an examination before himself from time to time, not exceeding ten days at one time, and may take the recognizance of the party accused with sufficient sureties for his personal attendance for the purpose before such magistrate; but, if the party is charged with a capital offence, he shall be committed to prison in the mean time. Adjournment of examination. Recognizance. 1824, 244, § 2.

SECT. 10. If the party, so recognized, shall not appear, at any time appointed, before the magistrate, for further examination, the magistrate shall record the default, and certify his recognizance with the record of the default to the district court; and the like proceedings shall be had thereon, as on a breach of the condition of a recognizance for appearance before the court. Proceedings, if party fail to appear. 1824, 244, § 3.

in a sum not exceeding twenty dollars ; which shall be valid, notwithstanding the disability of coverture or minority. CHAP. 171.

SECT. 22. Any justice of the supreme judicial court or district court, or any two justices of the peace and quorum for any county, on application of any prisoner committed for a bailable offence, or for not finding sureties to recognize for him, may inquire into the case and admit such person to bail. Bail may be taken after commitment. 1821, 68. 1 Fairf. 473.

SECT. 23. Any magistrate, before whom a prisoner is brought, may associate another magistrate with him in performing the duties before mentioned ; but no fees shall be taxed for him. Justice may associate another justice with him.

SECT. 24. All examinations and recognizances, taken by a magistrate pursuant to the provisions of this chapter, shall be certified and returned to the county attorney or clerk of the court, before which the party charged is bound to appear, on or before the first day of its session ; and, in case of neglect of such justice, he may be compelled by rule of court, and, if it be disobeyed, by attachment for contempt. Examination and recognizance to be returned to the county attorney, or clerk.

SECT. 25. Any person committed or recognized to answer to a charge of assault and battery or other misdemeanor, for which the party injured may have a remedy by civil action, except when the offence was committed by or upon a sheriff or other officer of justice, or riotously, or with a felonious intent, if the injured party shall appear before the magistrate, who made the commitment or took the recognizance, and acknowledge in writing that he has received satisfaction for the injury, the magistrate in his discretion, may, on payment of all costs, discharge the recognizance, or supersede the commitment, by an order under his hand ; and may also discharge the recognizances of all the witnesses taken in the case. Prosecutions may be discontinued in certain cases, after restitution made for private injuries.

SECT. 26. Every such order of discharge of recognizances shall be filed in the office of the clerk of the court, at which the party and the witnesses were bound to attend ; and every order, suspending the commitment of the party charged, shall be delivered to the keeper of the jail, and shall, if so filed and delivered, and not otherwise, forever bar all remedy by civil action for such injury. Discharge, in such case, to be preserved on file, &c.

SECT. 27. When any person, under recognizance in any criminal prosecution, shall fail to perform the condition thereof, his default shall be recorded ; and process shall be issued against the person bound by such recognizance, or against such of the persons as the prosecuting officer shall direct ; but, in the suit, no costs shall be taxed for travel. Remedy on recognizances.

SECT. 28. Any surety in a recognizance may be forever discharged from its obligations, by paying to the county treasurer, either before or after process has been issued against him, the amount for which he was bound as surety, with costs of prosecution, if any, or depositing the same with the clerk of the court, where the recognizance is filed. Surety may pay the penalty to the county treasurer, or the clerk.

SECT. 29. When a scire facias is brought on behalf of the state, to recover the penalty of any recognizance, taken in a criminal prosecution of principals, sureties or witnesses, when the penalty shall be forfeited, the court may, on application of the party, remit all or any part of the penalty of such recognizance, upon such terms, as they may deem reasonable and just. Court may remit the penalty either wholly, or in part.

SECT. 38. Indictments may be sustained, notwithstanding certain defects in form.

39. Payment of private claims out of forfeited recognizances.

SECT. 40. Proceedings on exceptions in the district courts.

41. Disposal of law questions in criminal trials.

CHAP. 172.

SECTION 1. Prior to the commencement of each term of the supreme judicial court, in each county, and prior to the term of the district court, in each county, to which grand jurors shall be returned, it shall be the duty of the clerk of the court to make out from the returns on the venires for grand jurors, an alphabetical list of such jurors.

Clerks of courts to prepare alphabetical lists of grand jurors. 1821, 84, § 10.

SECT. 2. When the grand jury is to be empaneled, the clerk shall cause the first two persons, named on the list, to be first called, and the following oath shall be administered to them: "You, as grand jurors of this inquest for the body of this county of \_\_\_\_\_, do solemnly swear, that you will diligently inquire, and true presentment make, of all such matters and things, as shall be given you in charge. The state's counsel, your fellows' and your own, you shall keep secret. You shall present no man for envy, hatred or malice; neither shall you leave any man unrepresented, for love, fear, favor, affection, or hope of reward; but you shall present things truly, as they come to your knowledge, according to the best of your understanding. So help you God." The other jurors shall then be called, in such divisions as the court may order, and the following oath shall be administered to them: "The same oath, which your fellows have taken on their part, you, and each of you, on your behalf, shall well and truly observe and keep. So help you God."

Grand jurors' oath. 1821, 84, § 10, 12.

SECT. 3. When any person returned as grand juror, is conscientiously scrupulous of taking an oath, he shall be allowed to make affirmation, substituting the word, "affirm," instead of, "swear;" and also the words, "this you do under the pains and penalties of perjury," instead of, "so help you God."

Form of affirmation. 1821, 84, § 12.

SECT. 4. The grand jury, having been empaneled and instructed by the court, shall retire, in company with an officer; to their room, and there elect by ballot one of their number to be their foreman; and give notice thereof to the court, and the clerk shall record it.

Election of foreman. 1821, 84, § 13.

SECT. 5. Such foreman shall continue in office during the term or year, for which he was returned; but, in case of his sickness or absence, the jury may, in like manner, elect and announce to the court, the choice of another foreman.

Term of his office. 1821, 84, § 13.

SECT. 6. The foreman of each grand jury, the attorney general or county attorney, in the presence of the grand jury, shall have power to swear or affirm any witness to testify before such jury; and the foreman shall return to the court, which empaneled them, a list of all the witnesses so sworn, before the grand jury are discharged by the court; which list shall be filed and entered on record by the clerk.

Oath of witnesses before the grand jury. Lists to be returned to the court. 1821, 84, § 13.

SECT. 7. It shall be the business of the grand juries to present all crimes and offences and breaches of law, cognizable by the respective courts, at which they attend.

Duties of grand jury. 1821, 84, § 15.

SECT. 8. Any grand jury may appoint one of their number to

May appoint one of their

done preparatory for trial, and assigning a time therefor, shall give notices to the other judges thereof, so that a majority of the justices may be present at the trial. CHAP. 172.  
1826, 347, § 6.

SECT. 20. When an indictment is found for a capital offence, and the supreme judicial court shall not by law hold a session in the same county, in which the indictment is found, within six months after the finding of the same, a special term of said court may be held for the purpose of trial of the accused, by a majority of the court, at such time and place as they may direct, by their order in writing, to the sheriff of the same county. Special session of the supreme judicial court may be held in certain cases, for a capital trial.

SECT. 21. The sheriff shall give such notice of the intended special term, as the court shall have prescribed in their order to him; and the clerk shall issue venires for jurors, and all necessary preparations shall be made by the sheriff, as for a regular term; but the court shall dispose of no civil action without consent of parties. Public notice thereof. Venires. No civil action disposed of, except by consent.

SECT. 22. Any person indicted for a crime punishable with death, or by imprisonment in the state prison for life, shall be entitled to have a list of the jurors returned delivered to him or his counsel, a copy of the indictment and process to summon his witnesses, at the expense of the state; all which it shall be the duty of the clerk to furnish without expense to the prisoner. Rights of persons indicted.

SECT. 23. A person indicted for any offence, punishable by confinement in the state prison, shall be entitled to a copy of the indictment without paying any fees therefor. Same subject.

SECT. 24. The attorney general, or other prosecuting officer, shall have the same power to issue a summons for witnesses as a justice of the peace or clerk of the court, in criminal cases; and, in all cases, when a witness is summoned on behalf of the state, it shall not be necessary to tender him any fees. Prosecuting officer may summon witnesses.

SECT. 25. When a person, indicted for an assault and battery, or other misdemeanor, for which the party injured may have a remedy by a civil action, except felonious assaults, or assaults upon an officer of justice, or resisting him while in the execution of his office, or assaults and batteries of such officers, if the injured party shall appear in court and acknowledge satisfaction for the injury, the court may, on payment of all costs, order a stay of all further proceedings, and discharge the defendant from the indictment, which shall bar all remedy by action for the injury. When proceedings may be stayed, after indictment on satisfaction made to party injured.

SECT. 26. When a person shall be arraigned on any indictment, it shall not be necessary to ask him, how he will be tried. A useless form dispensed with.

SECT. 27. When a plea in abatement, or other dilatory plea to an indictment shall be offered, the court may refuse to receive it, until the truth of it shall be proved by affidavit or other evidence. Plea in abatement verified by oath, &c.

SECT. 28. On the application of a defendant in any criminal prosecution, the court may grant a commission to examine any material witness residing out of this state, in the same manner as in civil causes; and the prosecuting officer may, if he shall see fit, join in such commission, and name therein any material witness to be examined on the part of the state. Depositions may be taken out of the state, on request of defendant.

SECT. 29. The interrogatories, when settled, shall be annexed to the commission, which shall be executed as in civil causes; and the depositions, taken under such commission, shall be read in the Same subject.

or county treasurer, and any portion of such penalty shall accrue to any person, by reason of the offence of which the appellant was convicted, the court may award to him such sum as he may be entitled to, out of it. CHAP. 172.

SECT. 40. Any person, convicted of an offence in the district court, may allege exceptions to any opinion, direction or judgment of the said court, and thereupon such proceedings shall be had in said court, and also in the supreme judicial court, as are prescribed in the nineteenth section, of the ninety seventh chapter, establishing the said district court. Proceedings, on exceptions, in the district courts.

SECT. 41. In criminal trials in the supreme judicial court, any person, convicted of any offence tried before any one justice of said court, may, in the manner mentioned in the preceding section, allege exceptions to any opinion, direction or judgment of such justice, to be allowed and signed by him; or any questions of law, which may be so reserved on exceptions, as above stated, may be reserved on a report signed by such justice, who may require such defendant to recognize with sufficient sureties to appear at the next term of said court, and abide the judgment which the full court shall render in the cause; or commit him, on his neglecting so to recognize. Disposal of law questions, in criminal trials.

## CHAPTER 173.

### AS TO THE DISPOSAL OF INSANE PERSONS, WHEN PROSECUTED FOR CRIMES OR OFFENCES.

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| <p>SECT. 1. Duty of court, when either jury finds the party accused, to be insane.</p> <p>2. At whose expense such person to be supported in confinement.</p> <p>3. How he may be liberated, when safe.</p> | <p>SECT. 4. May be given up to his friends, they giving bonds to the judge of probate.</p> <p>5. Or to the overseers of the poor, if chargeable, a suitable place being provided.</p> <p>6. Towns in such case answerable for damages, if the person go at large.</p> |
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SECTION 1. When any person, indicted for any crime, shall be acquitted by the jury of trials, by reason of insanity or mental derangement, they shall state that fact to the court, when they return their verdict; and, when the grand jury shall, for the same reason, omit to find an indictment against any person, who has been arrested by legal process to answer for any crime or offence, they shall certify to the court the above mentioned reason for such omission; and the court shall have power to commit such person to prison, or the insane hospital, there to remain until restored to his right mind, or otherwise delivered by due course of law. Duty of the court, when either jury finds the party accused to be insane. 1821, 58, § 1, 2.

SECT. 2. And the person, so committed, shall be kept in prison, or the insane hospital, at his own expense, if he have sufficient property for the purpose; otherwise, of the person or town that would have been chargeable for his maintenance, if he had not At whose expense, such person to be supported in confinement. 1821, 58, § 1.

issue his warrant under seal of the state, authorizing the agent who may make the demand, at such time as shall be designated in the warrant, to take and transport such person to the line of this state, at the expense of such agent ; and shall also by such warrant require the civil officers of this state to afford all needful aid in its execution.

CHAP. 174.

SECT. 3. The governor, whenever he shall deem it necessary, is hereby authorized to offer and pay a suitable reward, not exceeding one thousand dollars in any one case, to any person, who shall, in consequence of such offer, apprehend and bring back, and secure any person escaping from any prison in this state, convicted of a capital crime or other high handed offence and misdemeanor, or charged therewith ; and also to offer and pay a like reward for apprehending any person, having committed any such crime or offence, where it cannot be done in the ordinary course of proceeding : and the governor, with advice of the council, may draw his warrant on the treasurer for the payment of such reward.

May offer re-  
wards for ap-  
prehending per-  
sons convicted,  
or charged with  
crimes.  
1821, 112.

SECT. 4. Whenever any person, who has been or shall hereafter be sentenced by the supreme judicial court to suffer the punishment of death, shall make application to the governor for a pardon, and the governor shall think proper, by and with advice and consent of the council, to grant such pardon on condition, that the person thus sentenced be imprisoned or confined to hard labor during his natural life, or for any certain term of years, in the condition of such pardon to be expressed, the governor is hereby authorized, in order to carry the same into effect, to issue his warrant, directed to all proper officers, and they shall be held to serve and obey the same in the same manner, as if such imprisonment or confinement had been the punishment awarded in the original sentence.

Of conditional  
pardons to per-  
sons under sen-  
tence of death.  
1821, 32.

## CHAPTER 175.

### OF THE LIBERATION OF POOR CONVICTS.

SECT. 1. Persons, imprisoned for non pay-  
ment of fines or costs, may be lib-  
erated by the sheriff, after thirty  
days, on giving their notes, &c.  
2. Lien on real estate.

SECT. 3. Notes may be sued, as in other ca-  
ses.  
4. Liability of prisoner for false state-  
ment, as to his property.

SECTION 1. When any person, convicted of a criminal offence, shall be sentenced to pay a fine and costs, or costs only, and stand committed until sentence be performed, if the sentence be not complied with by payment of the sum due, within thirty days next following, the sheriff may liberate him from prison, if committed for no other cause, and, if he be unable to pay such fine and costs, upon his giving his promissory note for the amount due, payable to the treasurer of the county where he was committed, on demand with interest, accompanied with a written schedule, containing a true account of all his property of every kind, by him signed and sworn

Persons impris-  
oned, for non  
payment of fines  
or costs, may  
be liberated by  
the sheriff, after  
thirty days, on  
giving their  
notes, &c.  
1821, 83, § 1, 2.  
1822, 190, § 1, 2.

there lying dead, how and in what manner, he came to his death. **CHAP. 176.**  
Fail not herein, at your peril.

Given under my hand and seal, at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, in the year eighteen hundred and \_\_\_\_\_. S. F."

**SECT. 3.** The constable, to whom such warrant shall be directed and delivered, shall forthwith execute the same, and repair to the place where the dead body is, at the time appointed, and make return of the warrant with his doings to the coroner who granted it, or he shall forfeit the sum of ten dollars; and every person, summoned as a juror, who, without reasonable excuse, shall neglect to attend at the time and place appointed, shall forfeit the sum of seven dollars; to be recovered in an action of debt, in the name of the coroner, or the county, and for the use of the county.

Duties of constable and jurors. Penalties for neglect. 1821, 93, § 2.

**SECT. 4.** The coroner shall administer to the jurors, who shall appear, in view of the body, the following oath: "You solemnly swear, that you will diligently inquire, and true presentment make, on behalf of this state, how, when and in what manner, the person whose body here lies dead, came to his death, and you shall return to me a true inquest thereof, according to your knowledge and such evidence as shall be laid before you: So help you God."

Juror's oath. 1821, 93, § 2.

**SECT. 5.** If the six jurors summoned should not all appear as commanded, the coroner may require the constable, or any other person whom he shall appoint, to return jurors from the bystanders to complete the number.

Talcmen.

**SECT. 6.** An oath, of the following form, shall be administered by the coroner to the witnesses:

Witnesses' oath. 1821, 93, § 2.

"You solemnly swear, that the evidence, which you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth and nothing but the truth: So help you God."

**SECT. 7.** The coroner may issue subpoenas for witnesses to be served, as in other cases, and the officer serving them shall be entitled to the like fees; and the fees for the attendance of persons thus summoned shall be the same, as if they had been summoned on behalf of the state to attend a justice's court.

Subpoenas for witnesses. Their fees. 1821, 93, § 2.

**SECT. 8.** The evidence of all the witnesses shall be in writing, and signed by them; and, if such evidence relate to the trial of any person concerned in the death, then the coroner shall bind such witness[es] by recognizance, in a reasonable sum, for their personal appearance, at the next supreme judicial court, to be held in the same county, to give their testimony accordingly; and, on their refusal or neglect so to recognize, he shall commit them to prison, and shall return, to the same court, the inquisition, written evidence, and recognizance by him taken.

Testimony to be in writing, and signed. Power of coroner, to recognize the witnesses. 1821, 93, § 2.

**SECT. 9.** The jurors having been sworn, the coroner shall give them in charge, to declare of the death of the person, whether he died of felony, mischance or accident; if of felony, who were principals and accessories, the instrument employed, and of all important circumstances; if by mischance, how and in what manner; if by his own hand, the manner and all attending circumstances; and he shall make proclamation for all persons, who can give any evidence, to draw near and be sworn.

Coroner's charge to the jury, and proclamation for persons to give evidence. 1821, 93, § 2.

- SECT. 12. Warden not to be concerned in trade. His duties.
13. His government in the prison.
14. Warden or his deputy to execute precepts in the prison. To have command of the guard, and all persons employed therein.
15. Supplies to be furnished on contract by the year. Warden to advertise for sealed proposals.
16. Inspectors to open and decide on the proposals, the beginning of October.
17. If no offer is accepted, how warden is to procure supplies.
18. Warden to take bills at the time of delivery. Clerk to compare them with the articles delivered.
19. Contracts for articles from the prison, labor of convicts, &c. to be made by warden, under the direction of the inspectors. Security.
20. Service of warrant, as provided in chapter, 168, § 7, for removal of convicts.
21. Convicts to be lodged in jails, when necessary, during their conveyance, at the expense of the state.
22. Of actions by or against the warden in his official capacity. Warden, a witness in such actions. His rights, obligations and powers to devolve upon his successor.
23. Warden may submit controversies to arbitration.
24. Warden exempted from arrest, while in office.
25. Powers, duties and liabilities of deputy warden.
26. If office of warden become vacant, deputy to give bonds and act, as warden. If he neglect, inspectors to appoint a warden pro tempore.
27. Of the clerk and commissary.
28. Overseers.
29. Neglect of subordinate officers, punished by a deduction from their pay.
30. Volunteer company organized, as a guard. Equipments, duties and exemptions.

- SECT. 31. Officers, &c. of the prison, members of the company. Company subject to the provisions of chapter, 16.
32. Special forfeitures for neglect of duties.
33. Appointment and duties of chaplain.
34. Sunday schools.
35. Appointment and duties of physician.
36. Provision in case of pestilence or contagion.
37. Punishment of officers for voluntarily suffering an escape.
38. For indulging prisoners, contrary to the rules.
39. Rescue, or aiding prisoners attempting to escape.
40. Secretly conveying, or attempting to convey, any article to a convict.
41. Convict, sentenced for life, assaulting an officer, breaking from prison, or attempting an escape.
42. Similar offences by convicts, sentenced for a less term.
43. Mode of punishment under the two preceding sections.
44. In case of resistance, officers justified in using all needful force.
45. Duty of citizens, to aid the government of the prison.
46. Measures to be used by the warden to retake convicts, escaping.
47. Additional punishment, when it appears, that any convict has been before sentenced to confinement in any state prison.
48. When computation of term of confinement to commence.
49. Convict's property to be received by warden, and taken care of.
50. Provision for convicts, on their discharge from confinement.
51. Fee receivable from visitors.
52. Alterations made by warden, under the inspectors.
53. Compensation of the inspectors.
54. Chaplain's salary. Appropriation for Sunday schools. Compensation of physician and subordinate officers.
55. Appropriations for the prison to be paid to the warden, on warrants from the governor.

SECTION 1. The state prison at Thomaston, in the county of Lincoln, shall continue to be maintained as the prison and penitentiary of this state, in which convicts, sentenced to hard labor for life, or any term of time, not less than one year, shall be confined, employed and governed, as hereinafter provided.

Location of the prison; term of confinement, not less than one year. 1823, 226, § 1. 1824, 232, § 1.



at stated times, at the state prison, once at least in every three months, and oftener if necessary, to attend to, and inspect the concerns of the prison, the manner of keeping the books and accounts, and the register of punishments kept by the warden; and, from time to time, carefully to examine the same, and to keep a record of their doings; one of them, at least, shall visit the prison as often as once in every week, to examine into all the concerns thereof, and to see that the laws and regulations thereof are duly observed, and the duties of the several officers are faithfully performed, and to advise with the warden of the prison on the concerns thereof, whenever thereto requested; and each of them shall, at all times, have free access to all parts of the prison, and be allowed to inspect and examine all the books, accounts and writings, pertaining to the prison, or the business, management and government thereof. And the inspectors, as soon as may be after each stated meeting, or oftener if necessary, shall transmit to the governor and council a transcript of the record of their doings, and such other information relative to the concerns of the prison, as they may deem proper.

SECT. 8. It shall be the duty of the inspectors, in the month of January, annually, to audit, correct and settle the accounts of the warden with the prison and the state, for the year ending on the last day of December preceding, and make report thereof, in said month of January, to the governor and council, to be laid before the legislature: which report shall exhibit an account of the stock on hand of different kinds, as well at the beginning as at the close of the year; the several sums expended for materials, provisions, fuel, clothing, bedding, lights, tools and other articles; the amount of manufactures of each kind, and all other articles sold from the prison; the profits or loss upon each branch of business; and all other particulars, necessary to give the legislature a full understanding of the fiscal and other concerns of the prison; and shall, at the same time, furnish an estimate of the probable income and expense of the prison for the ensuing year.

SECT. 9. It shall be the duty of the inspectors, to inquire into any improper conduct which may be alleged to have been committed by the warden, or any subordinate officer of the prison, in relation to the concerns thereof; and, for that purpose, may issue subpoenas for witnesses to compel the attendance of witnesses and the production of papers and writings; and may examine witnesses, under oath, to be administered by the chairman; and may adjudicate on such alleged improper conduct, in like manner, and with like effect, as in cases of arbitration.

SECT. 10. The inspectors shall examine into all disorderly conduct among the prisoners; and, when it shall appear to them, that any conduct is disorderly, refractory or disobedient, they may order such corporal punishment as they may deem necessary to enforce obedience, and as shall not be inconsistent with humanity, and may be authorized by the rules and regulations established for the government of the prison.

SECT. 11. The inspectors shall, from time to time, establish such rules and regulations, consistent with the laws of the state, as

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Inspectors to visit the prison, and advise with the warden; to keep records of their doings, and transmit them to the governor.

1824, 282, § 8.  
1831, 499, § 2.

Inspectors to audit and settle the warden's accounts, and make annual reports for the use of the legislature. Items for their report.

1830, 477, § 8.  
1837, 303.

To adjudicate on alleged improper conduct of wardens, or other officers. Evidence.

May order refractory convicts to be punished.

1830, 477, § 10.

To establish regulations of the prison, sub-

uty himself, shall be answerable. The warden shall have the command of all the force for guarding the prison, and of all officers and persons employed under him, in overseeing, guarding and governing the same.

**SECT. 15.** All articles of food, clothing, bedding, raw materials for manufactures, fuel and other articles, that may be necessary for the use of the prison, shall be contracted for by the year, when such contracts can be advantageously made, in the following manner: The warden shall make an estimate of the quantity of each article, necessary for the then next ensuing year, commencing on the first day of January, and ending on the last day of December of each year, and advertise that he will receive sealed proposals for furnishing and delivering, at the prison, said articles or any of them, until the first day of October then next ensuing; for which payment shall be made quarterly, stating the quantity and quality of each article required, the time or times when each article must be delivered, and the terms of payment; which advertisement, he shall cause to be inserted in one or more of the newspapers printed in Portland, and in one or more of the newspapers printed in each of the counties of Lincoln and Kennebec, three weeks successively; the last publication to be at least one month before the first day of October in each year.

**SECT. 16.** The inspectors shall meet at the prison, within five days next after the first day of October; and, having first estimated the lowest price at which each article, advertised for, can be procured, shall proceed to open and examine the proposals; and the lowest offer for furnishing any article, not being above the market price, shall be accepted, if good security be given to the warden for the faithful performance of the contract.

**SECT. 17.** If no such offer should be made below the estimated market price, or if any article should not be included in such advertisement, or if the inspectors should deem it expedient to decline any or all of such offers, the warden shall procure such articles as may be necessary for the prison, by advertising anew, or in such manner, as may be prescribed by the inspectors.

**SECT. 18.** The warden shall take bills of the quantity and price of supplies, furnished for the prison, at the time of delivery, and shall exhibit the same to the clerk, who shall compare the bills with the articles delivered; if the bills are found correct, he shall enter them with the date, in a book to be kept for that purpose; in like manner bills shall be taken and entered, of all services rendered for the prison; if any such bill be found incorrect, the clerk shall omit to enter it, and immediately give notice to the warden, that the error may be corrected.

**SECT. 19.** All sales of limestone, granite or other articles from the prison, and the letting to hire of such of the convicts, as the inspectors may deem expedient, and all other contracts on account of the prison, shall be made with the warden in such manner, as shall be prescribed by the inspectors. No such contract shall be accepted by the warden, unless the contractor shall give satisfactory security for the performance of it; and no officer of the prison shall be, directly or indirectly, interested in any contract, as aforesaid.

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and all persons employed therein.  
1824, 282, § 3, 7.

Supplies to be furnished on contract by the year. Warden to advertise for sealed proposals.  
1830, 477, § 4.

Inspectors to open and decide on the proposals, the beginning of October.  
1830, 477, § 4.

If no offer is accepted, how warden is to procure supplies.  
1830, 477, § 4.

Warden to take bills, at the time of delivery. Clerk to compare them with the articles furnished.

Contracts for articles from the prison, labor of convicts, &c. to be made by warden, under direction of the inspectors.  
Security.  
1830, 477, § 4, 6.  
9 Pick. 331.

**SECT. 25.** Whenever the office of warden shall be vacant, or the warden shall be absent from the prison, or unable to perform the duties of his office, the deputy warden shall have the powers, perform the duties, and be subject to all the obligations and liabilities of the warden.

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Powers, duties and liabilities of deputy warden.

**SECT. 26.** If the office of warden shall become vacant, when the governor and council are not in session, the inspectors may require the deputy warden to give bond to the state in the sum of five thousand dollars, with sufficient sureties to be by them approved, with condition for the faithful discharge of the duties incumbent on him, as deputy warden and treasurer; and, from the time such bond shall be approved, the deputy shall receive the salary and emoluments of the warden, in lieu of his former pay, so long as he shall perform the duties of the office; if the deputy warden shall not give such bond, when required, the inspectors may remove him from office, and appoint a warden pro tempore; who shall give bond, similar to the one required of the deputy warden, and shall have the power and authority, and perform the duties, and receive the salary and emoluments of the warden, until a warden shall be duly appointed, and enter upon the discharge of the duties of his office.

If office of warden become vacant, deputy to give bonds, and act as warden. If he neglect, inspectors to appoint a warden, pro tempore.

**SECT. 27.** It shall be the duty of the clerk and commissary to keep an account of all supplies purchased for the use of the prison, as mentioned in the preceding eighteenth section, and of all articles sold, and delivered from the same, and to assist in effecting sales and purchases in such manner as the warden may direct; he shall attend the meetings of the inspectors, when they shall request, keep a record of their proceedings, and perform such other services, pertaining to his employment and the superintending of the prison, as shall be directed by the inspectors or warden.

Of the clerk and commissary.

**SECT. 28.** Persons, who have suitable knowledge and skill in the branches of labor and manufactures, carried on in the prison, shall, when practicable, be employed as overseers; and they shall respectively superintend such portions of the labor of the convicts, for which they are most suitably qualified, and which shall be assigned to them by the warden; and all of them, as well as the other subordinate officers of the prison, shall perform such services in the management, superintending and guarding of the prison, as shall be prescribed by the rules and regulations, or directed by the warden.

Overseers.  
1830, 477, § 1.

**SECT. 29.** If any subordinate officer of the prison shall be guilty of negligence or unfaithfulness in the discharge of his duties, or of a violation of any of the laws or rules and regulations for the government of the prison, the warden, with the approbation of the inspectors, may deduct from the pay of such officer, a sum, not exceeding his pay for one month.

Neglect of subordinate officers, punished by a deduction from their pay.  
1830, 477, § 2.

**SECT. 30.** There shall continue to be organized, by the governor and council, a volunteer company of riflemen, or other militia in the immediate vicinity of the state prison, to consist of not more than sixty persons, and, if necessary, enlistments may be authorized for that purpose from any of the companies of militia now formed; and each private and non commissioned officer of said company shall be bound to be well armed and equipped at all times; to keep

Volunteer company organized, as a guard. Equipments, duties and exemptions.  
1824, 282, § 26.  
1826, 339, § 4.  
1839, 407.

**SECT. 35.** The inspectors and warden shall appoint some suitable person to be a physician and surgeon of the state prison, whose duty it shall be to visit the prison whenever requested by the warden, prescribe for the convicts, who may be sick, see that proper attention be paid to the clothing, regimen and cleanliness of such as may be in the hospital, and advise, when illness of any convict may require his removal to the same; and, upon such advice, and in other cases, when he shall deem it necessary, the warden shall cause any sick convict to be forthwith removed to the hospital, and there to receive such care and attention, and be furnished with such medicines and diet as his situation may require, until the physician shall determine, that he may leave it without injury to his health.

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Appointment and duties of physician. 1832, 28, § 3.

**SECT. 36.** In case of any pestilence or contagious sickness, breaking out among the convicts in the prison, the inspectors and warden may cause the convicts confined therein, or any of them, to be removed to some suitable place of security, where such of them as are sick shall receive all necessary care and medical assistance. Such convicts shall be returned as soon as may be to the state prison, to be confined according to their respective sentences, if the same be unexpired.

Provision, in case of pestilence or contagion.

**SECT. 37.** If any officer or other person, employed in the state prison or its precincts, shall voluntarily suffer, aid or connive at the escape of any convict from the same, he shall be punished by imprisonment in the state prison for any term of time, not more than the whole term, during which such convict was sentenced to be imprisoned.

Punishment of officers, for voluntarily suffering an escape. 1824, 282, § 9.

**SECT. 38.** If any officer, or other person employed in the state prison or its precincts, shall negligently suffer any convict confined therein to be at large, without the precincts of the prison, or out of the cell or apartment assigned to him, or to be conversed with, relieved or comforted, contrary to law, or the rules and regulations of the prison, he shall be punished by a fine, not exceeding five hundred dollars.

For indulging prisoners, contrary to the rules. 1824, 282, § 10.

**SECT. 39.** If any person shall forcibly rescue, or attempt to rescue, any convict sentenced to the state prison, from the legal custody of any officer or other person, or from the state prison, or from any jail or other place, where he may be legally confined, or shall convey, or cause to be conveyed, to such convict or into such jail or other place, or into the state prison, any tool, instrument, weapon or other aid, with intent to enable such convict to escape, whether such escape be effected or not, he shall be punished by imprisonment in the state prison, not more than twenty years, or by fine, not exceeding five hundred dollars.

Rescue, or aiding prisoners, attempting to escape. 1824, 282, § 11.

**SECT. 40.** If any officer, contractor, or teamster or other person shall deliver, or have in possession with intent to deliver, to any convict confined in the state prison, or shall deposit or conceal in any place in or about the state prison or its precincts, or in any wagon or other vehicle going thereto, any article, with intent that any convict therein should obtain the same, without the consent or knowledge of the warden or deputy warden, the person, so offending, shall be punished by imprisonment in the state prison, not more than two years, or by fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than six months.

Secretly conveying, or attempting to convey, any article to a convict. 1830, 477, § 9.

court, when held within and for the county of Lincoln. The court, to whom such information is made, shall cause such convict to be brought before them to answer to the same; and, if, by confession of such convict, or by verdict, or otherwise according to law, it shall appear, that such information is true, the said convict, instead of the punishment for which he stands sentenced, may, at the discretion of the court, be punished by imprisonment for life, or any term of years; and, if the said charge shall not be established, the convict shall be remanded to the state prison, to be held on the original sentence.

SECT. 48. No convict shall be discharged from the state prison, until he shall have remained the full term for which he was sentenced, to be computed from, and including the day on which he was received into the same, exclusive of the time he may have been in solitary confinement for any violation of the rules and regulations of the prison; unless he shall be pardoned or otherwise released by legal authority.

When computation of term of confinement is to commence. 1824, 282, § 16.

SECT. 49. It shall be the duty of the warden to receive and take care of any property, that a convict may have with him at the time of his entering the state prison, and, when it may be convenient, to place the same at interest for the benefit of such convict; of which property the warden shall keep an account, and pay the same to said convict on his discharge, or, in case of his death, to his representatives; unless the same shall have been otherwise legally taken and disposed of.

Convict's property to be received by warden, and taken care of.

SECT. 50. When any convict is discharged from the state prison, who shall have conducted well during his imprisonment, the warden, at his discretion, may give to such convict, from the funds of the prison, a sum not exceeding five dollars, and, if he shall request it, a certificate of such good conduct; and shall take care that every convict, on his discharge from prison, is provided with decent clothing.

Provision for convicts, on their discharge from confinement. 1824, 282, § 22. 1826, 339, § 3.

SECT. 51. The warden shall have authority to demand and receive of each person, who shall visit the prison for the purpose of viewing the interior or precincts, such sum, not exceeding twenty five cents, and under such regulations, as the inspectors shall prescribe, for which the warden shall account to the state.

Fee receivable from visitors.

SECT. 52. The warden shall have power, upon the recommendation of the inspectors, and with the approbation of the governor and council, to make or cause to be made such additional buildings or alterations within the prison or its precincts, as they shall deem to be necessary and proper.

Alterations made by warden, under the inspectors. 1824, 282, § 8.

SECT. 53. The inspectors shall receive for their services such compensation as shall, from time to time, be allowed by the governor and council.

Compensation of the inspectors. 1824, 282, § 4.

SECT. 54. There shall be annually appropriated for the compensation of the person appointed to officiate as chaplain of the state prison, a sum, not exceeding one hundred dollars; and, for the use of the Sunday school, a sum, not exceeding fifty dollars, and for the compensation of the physician and surgeon and for medicines, a sum, not exceeding one hundred and fifty dollars, annually; and the subordinate officers and other persons employed in manag-

Chaplain's salary. Appropriation for Sunday school. Compensation of physician and subordinate officers. 1824, 282, § 24. 1826, 28, § 3, 4.

rection, where not already provided, with convenient accommodations, thereunto adjoining and belonging, to be used and employed for the keeping, correcting and setting to work of rogues, vagabonds, common beggars, idlers and disorderly persons, and all other offenders, who may be committed thereto, in due course of law.

**SECT. 2.** Until such house or houses of correction be erected or otherwise provided, the common prison in each county, may be made use of for that purpose.

Until provided, county jails to be used as such. 1821, 111, § 1.

**SECT. 3.** The commissioners, in their respective counties, shall appoint a suitable person to be master of each house of correction, and to hold his office during their pleasure.

Appointment of the master. 1821, 111, § 2.

**SECT. 4.** The commissioners shall also establish such rules and orders, not repugnant to the laws of this state, as they shall deem necessary for restraining, employing, governing and punishing the persons there confined, and for managing the prudential concerns of the institution.

County commissioners to make rules and orders. 1821, 111, § 2.

**SECT. 5.** The commissioners, in their respective counties, where circumstances may require it, shall appoint, annually, three or five suitable and discreet persons of their county, living near the house of correction, to be overseers of such house; who shall see that the rules, established for the government of such house, and the persons therein confined, be duly observed; and also shall examine the accounts of the master, relating to the earnings of the prisoners, and the expenses of the institution; and they shall also keep a fairly written register of all their official proceedings.

Appointment and duties of overseers of such house. 1821, 111, § 3.

**SECT. 6.** The overseers shall have power to make contracts for work to be done in the house with any person disposed to supply the materials, and to make contracts for letting out any of the persons confined, to employers living near enough, in their opinion, to the house of correction, for the overseers or master, to have general inspection of the conduct of persons, so let out, and of the treatment they receive.

Their powers. 1821, 111, § 3.

**SECT. 7.** The overseers shall receive out of the earnings of the prisoners, or, if the same be insufficient, from the county treasury, a reasonable compensation to be allowed by the commissioners.

Compensation. 1821, 111, § 3.

**SECT. 8.** The commissioners may remove any of the overseers during the year, and may fill all vacancies, happening by removal, resignation or otherwise. They shall also, at least as often as every regular session, inquire into the state of the house of correction, and examine the register and accounts of the overseers and master, and make such further regulations and alterations in the treatment and government of the prisoners for the time being, as circumstances may render expedient, not being contrary to the laws of the state.

Supervision by the commissioners. 1821, 111, § 4.

**SECT. 9.** Any justice of the peace, within his county, on complaint under oath, and any district court in any county within its district, on indictment, for the terms provided in the following section, may send and commit to the said house to be kept, employed and governed, according to the rules and orders thereof, all rogues, vagabonds and idle persons, going about in any town or place in the county, begging, or persons using any subtle craft, juggling or unlawful games or plays, or, for the sake of gain or emolument,

Description of persons liable to be sent to the house of correction. 1821, 111, § 5.

provide and cause to be kept, at the expense of their respective counties, suitable materials, implements and other necessaries, sufficient at all times to employ and keep at work, such as are or may be legally committed to the house of correction.

SECT. 15. The master of such house may set to work all such persons as are committed to his custody, so far as they may be able, during the time of their confinement; and, if their department render it expedient, he may put shackles or fetters upon them to prevent resistance or escape, without unnecessarily inflicting pain or interrupting their labor.

SECT. 16. Should any person, so committed, be stubborn, disorderly, idle or refractory, or refuse to perform his appointed task in a proper manner, the master may abridge him of his food, until he shall comply with the reasonable requirements of the master and overseers.

SECT. 17. The persons committed shall be allowed only two third parts of their net earnings for their support, and the residue shall be to the use of the master; unless such persons are heads of families; then, the whole net profit of their labor, or so much thereof as the county commissioners shall order, shall be for the relief and support of such persons and their families.

SECT. 18. If any person, committed as aforesaid, shall, from sickness or other cause, be unable to work, so as to support himself out of his share of earnings, the master shall then comfortably provide for and take care of him, and be reimbursed as hereinafter provided.

SECT. 19. The master of every such house shall keep an exact account of all profits and earnings, that shall arise from the labor of all such as shall be committed to his care and custody, and of his disbursements for their support and maintenance, specifying the times of their commitment and liberation, and present the same account, upon oath, unto the commissioners for the same county annually, and as much oftener as he shall be thereunto directed. The commissioners may make such further allowance, as they think reasonable in special cases, for the care, labor and services of the master, besides the allowance of one third part of the earnings, provided in the seventeenth section of this chapter.

SECT. 20. Whenever there shall be due to any master of such house, from any person therein committed, any sum of money under the provisions of this chapter, and the account of such master shall have been duly proved, and certified to be correct by the commissioners, he shall have a right to demand the same of the person committed, if of age, otherwise, of his parent, master or guardian; and if there be not sufficient estate of the parties liable as aforesaid, the same may be demanded of the overseers of the town, wherein such person shall have his legal settlement.

SECT. 21. Fourteen days after demand made, in writing, upon either of the parties, liable by virtue of the preceding section, if the money, so ascertained to be due, shall remain unpaid, the master of such house of correction, within two years after the date of the certificate of allowance, may commence and prosecute his action at law for the same, declaring as upon an implied promise; and

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Materials and implements for labor.

1821, 111, § 9.

Employment of prisoners. Restraints.

1821, 111, § 10.

Punishment by abridgment of food.

1821, 111, § 10.

Allowance to persons committed, from their earnings.

1821, 111, § 9.

Provision for the sick and disabled.

1821, 111, § 9.

Master to render account of prisoners' earnings. Special allowance to the master, in certain cases.

1821, 111, § 11.

Remedy of master, for sums due him from persons committed.

1821, 111, § 12  
22 Pick. 211.

Same subject.  
1821, 111, § 12.  
7 Pick. 336.

SECT. 27. The overseers and master of such town house of correction shall have such compensation for their services, as shall be annually voted by their town.

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Compensation of overseers and master. 1825, 297, § 5.

SECT. 28. The overseers shall, from time to time, examine into the prudential concerns and management of such house, and see that the master faithfully discharges his duty.

Duties of the overseers. 1825, 297, § 5.  
Support of the prisoners. 1825, 297, § 5.

SECT. 29. Every person, committed to such town house of correction, shall be supplied by the keeper thereof with a suitable quantity of bread and water, or other nourishment, as the overseers may order, while so confined; and all expenses, incurred for commitment and maintenance, exceeding the earnings of the person confined, shall be paid by the parties liable for similar charges, in the case of persons committed to any county house of correction.

SECT. 30. The overseers of any such town house of correction may commit thereto, for a term, not exceeding forty eight hours, any person publicly appearing in a state of intoxication, or in any manner violating the public peace, whenever the safety of the person intoxicated, or the good order of the community require it, for the purpose of security, if necessary, till such person[s] can be conveniently carried before a magistrate and restrained by complaint and warrant in the usual course of criminal prosecutions.

Powers of overseers, to commit persons to such house. 1825, 297, § 4.

SECT. 31. The form of the order for commitment may be in substance as follows: "To A. B., master of the house of correction, in the town of \_\_\_\_\_; you are hereby required to receive and keep C. D. in the said house of correction for the term of \_\_\_\_\_ hours, unless sooner discharged by our order.

Form of the order for commitment. 1825, 297, § 4.

E. F., } Overseers of said  
G. H., } house of correction."

And it shall be the duty of any sheriff, deputy sheriff, constable or other person, to whom such order shall be given by said overseers, forthwith to apprehend and convey such person to said house of correction, and deliver him to the master thereof, who shall take and keep such person agreeably to the order; the officer, or other person, serving such order, shall be entitled to receive from the town such fees for service and travel, as is allowed for service of warrants.

IN THE HOUSE OF REPRESENTATIVES, October 21, 1840.

This bill, including the several chapters, numbered from one, to seventy six, and from seventy eight, to one hundred and seventy eight, inclusive, having had three several readings, passed to be enacted.

HANNIBAL HAMLIN, *Speaker*.

IN SENATE, October 21, 1840.

This bill, including the several chapters, numbered from one, to seventy six, and from seventy eight, to one hundred and seventy eight, inclusive, having had two several readings, passed to be enacted.

STEPHEN C. FOSTER, *President*.

October 22, 1840. Approved.



JOHN FAIRFIELD.



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| <p>sect. 17. Payment thereof, how enforced.</p> <p>18. Power of banks to hold real estate. Restriction.</p> <p>19. Loans and discounts. Restriction on loans to directors.</p> <p>20. Not to engage in trade.</p> <p>21. Semi annual dividends.</p> <p>22. Cashier and other officers.</p> <p>23. Cashier not to be a director.</p> <p>24. Cashier and clerks to be sworn, and give bond.</p> <p>25. Special meetings of stockholders, how called.</p> <p>26, 27. Limitation of amount of debts and credits.</p> <p>28. Liability of directors, if they exceed those limits.</p> <p>29. Innocent directors exonerated.</p> <p>30. Banks still liable.</p> <p>31. Loans and issues not to be made, but at the banking house.</p> <p>32. Amount of circulation.</p> <p>33. Form and signature of bills. Every bank to receive its own bills, in payment of debts.</p> <p>34. Restriction, as to bills under five dollars. Fractional bills prohibited.</p> <p>35. Interest may be paid on deposits, but not to be payable on notes.</p> <p>36. Bills to be redeemable in specie at the bank.</p> <p>37. Exception, as to drafts or checks.</p> <p>38. Twenty four per cent. yearly damages, for not redeeming bills.</p> <p>39. Interest to be paid, till yearly damages commence.</p> <p>40. Damages to cease, after tender of the amount.</p> <p>41. Private property of stockholders liable in certain cases.</p> <p>42. Directors to disclose names and interests of stockholders.</p> <p>43. Liability for neglect, on demand.</p> <p>44. Loss from mismanagement of directors, how made up.</p> <p>45. Liability of stockholders, at expiration of charter.</p> <p>46. Mode of enforcing payment from directors or stockholders.</p> <p>47. Mode of obtaining contribution by a stockholder, who has been compelled to pay.</p> <p>48. Similar liabilities and remedies of corporations, when stockholders.</p> <p>49. Bank interest, limited to six per cent.</p> <p>50. Right of the state to require loans from banks.</p> <p>51. Requisition, how made.</p> <p>52. Cashier to make returns, when required by the governor. Form thereof.</p> | <p>Sect. 53. Cashiers to make semi annual returns. Form thereof.</p> <p>54. Returns to be signed and sworn to.</p> <p>55. Names of stockholders to be returned, when required by the legislature.</p> <p>56. Cashier's return to be verified by the directors.</p> <p>57. Penalty, for not making returns.</p> <p>58. Secretary of state to furnish blanks for returns.</p> <p>59. To publish abstracts, and transmit a copy to each bank.</p> <p>60. Bank commissioners; power and duties.</p> <p>61. Power to examine banks. May examine officers on oath. Punishment for refusal to testify.</p> <p>62. Proceedings by commissioners, if they deem a bank unsafe. Injunction, and appointment of receivers to close its concerns. Liability of banks after expiration of their charters.</p> <p>63. Plates for bills. Bills not void by alterations.</p> <p>64. Weights to be sealed by the state sealer.</p> <p>65. Gold, how to be weighed.</p> <p>66. Application to a judge of the supreme judicial court, if a bank refuse to pay its bills.</p> <p>67. Court may appoint receivers; who shall give bond.</p> <p>68. Their duties.</p> <p>69. May sell real estate and mortgages.</p> <p>70. May collect or sell any of the debts due to the bank.</p> <p>71. Revocation of authority of receivers.</p> <p>72. Appeal from any order of a judge, to the whole court.</p> <p>73. Compensation to receivers.</p> <p>74. Liability of officers, refusing to surrender property to the receivers.</p> <p>75. Receivers, after paying the debts, to deliver up the residue of property to the bank.</p> <p>76. Stockholders may be witnesses, after sale of their stock.</p> <p>77. Charters to expire October 1, 1847.</p> <p>78. Banking companies prohibited, unless authorized by the state.</p> <p>79. Agencies of foreign banks or bankers prohibited, unless authorized by the state.</p> <p>80. No person to issue bills as a private banker, to be circulated as money.</p> <p>81. Penalty for violating the three preceding sections.</p> |
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<p>Sect. 14. In case of insurrection, governor may detach, into actual service, an adequate military force.</p> <p>SECTION 28. (R. S. ch. 167.) General provisions relating to crimes and punishments.</p>	<p>Sect. 16. Convict sentenced for life to the state prison and committed, to be regarded as civilly dead. Distribution of his estate.</p> <p>SECTION 29. (General repealing act.)</p> <p>Sect. 1. Repeal of certain acts relating to banks and banking.</p> <p>SECTION 30. Time when this act shall take effect.</p>
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**BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES IN LEGISLATURE ASSEMBLED,** That the act passed on the twenty second day of October last, entitled "an act for revising, arranging, and amending the public laws of the state," be amended as follows :

**SECTION 1.** The first chapter shall be amended in the third section, by striking out from the twelfth clause the words, "in all cases, where an affirmation may be substituted for an oath," and inserting the following, "and in all cases, where a person, required to be sworn, is conscientiously scrupulous of taking an oath, he may affirm"; so that the clause, as amended, will be as follows :

R. S. ch. 1.

**XII.** The word, "oath," shall be construed to include, "affirmation"; and in all cases, where a person, required to be sworn, is conscientiously scrupulous of taking an oath, he may affirm.

Affirmation may be substituted for an oath by persons conscientiously scrupulous.  
1821, 86, § 1.

The same chapter shall be further amended, in the fourth section, by striking out the words, "first day of April," and inserting the words, "from and after the thirty first day of July"; and by adding at the close of the section the words, "and also excepting chapter, sixteen, entitled, 'Of the Militia,' which shall take effect from and after the first day of January, in the year one thousand eight hundred and forty two"; so that the fourth section, as amended, shall be as follows :

**SECT. 4.** All the chapters of these revised statutes shall take effect from and after the thirty first day of July, in the year one thousand eight hundred and forty one, except where other provision is expressly made, and also excepting chapter, sixteen, entitled, "Of the Militia," which shall take effect from and after the first day of January, in the year, one thousand eight hundred and forty two.

Revised statutes take effect August 1, 1841.

**SECTION 2.** The fourteenth chapter shall be amended in the tenth section, by striking out the words, "January first, in the year of our Lord one thousand eight hundred and forty one," and inserting the words, "the time when the revised statutes shall take effect"; so that the section, as amended, shall be as follows :

R. S. ch. 14.

**SECT. 10.** All laws, now in force, relating to the collection of taxes, shall be and remain in full force, for all the purposes of collecting any taxes, which may have been assessed, prior to the time when the revised statutes shall take effect.

Laws retained in force, for the purposes of taxes assessed prior to August 1, 1841.

The same chapter shall be amended, in the thirty second section, by striking out the words, "treasurer of the county," and inserting the words, "commissioners of the county"; so that the section, as amended, shall be as follows :

**SECT. 32.** All assessors, chosen or appointed as above provided, shall duly observe all such warrants, as they shall receive, while in office, from the state treasurer, or the commissioners of the county in which they reside, pursuant to any act of the legislature, imposing it for the use of the state, or granting it for the use of the county.

Assessors to observe warrants of state treasurer and of county commissioners.

The same chapter shall be amended, in the thirty fourth section, by striking out the words, "county treasurer's warrant to them to assess," and inserting

inspections of the militia of the respective brigades to which they belong, to the adjutant general, and also transmit abstracts thereof to the major generals of the respective divisions to which they belong, on or before the last day of October annually.

their annual returns by the last day of October. 1831, 121, § 27.

The same chapter shall be further amended, in the forty second section, by striking out all the section after the word, "allowance," and inserting, instead thereof, the following words :

Provided that, when the commanding officer of a company, raised at large, shall make requisitions to such treasurer, for rations in money and for powder, directed by law, he shall designate the number and names of the members of such company, belonging to such town, city or plantation, and certify that they perform military duty in his company.

Commanders of volunteer companies, how to apply for rations and powder for soldiers. 1831, 121, § 23.

The same chapter shall be further amended, in section, forty five, after the words, "the adjutant general and quarter master general, to be appointed by the governor, with advice of the council, with the rank of brigadier general," by inserting the words following :

And said officers shall keep their respective offices at the seat of government ; and their commissions shall continue in force four years from the time of their appointment, unless they shall be sooner removed by the governor and council.

Adjutant and quarter master general to keep their offices at the seat of government ; term of office limited. 1829, 421. R. S, ch. 17.

SECTION 4. The seventeenth chapter shall be amended, in section, fifty one, by striking out the words, "under the provisions of the sixteenth section of chapter, seventy seven ;" so that said fifty first section, as amended, will be as follows :

SECT. 51. All the sums, which may hereafter be received by the state, for the tax on the several banks, shall continue to be appropriated to the support of town or district schools.

Tax on banks appropriated to schools.

SECTION 5. The twentieth chapter shall be amended, in section one, by striking out the following words :

For the use and support of the gospel ministry in such town.

R. S. ch. 20. Fee in ministerial lands. 1832, 39, § 2.

The same chapter shall be further amended, by striking out the seventh section thereof.

Lands reserved for the first settled minister appropriated to schools. 1832, 39, § 2.

The same chapter shall be further amended, in section, fourteen, by inserting, after the words, "any sale of the same," the following words, "to the uses and uses specified in the respective grants and reservations, under which such lands have become so vested"; so that said fourteenth section, as amended, will be as follows :

SECT. 14. In all cases, where such lands have become vested in any parish, the assessors, clerk and treasurer, for the time being, and no other trustees for the same purpose are already appointed, shall be and they are hereby constituted a body corporate, and trustees of the ministerial fund in such parish forever, with like powers, and under like names, as selectmen, town clerk and treasurer ; and shall pay the annual income and profits of such lands, and interest on the proceeds of any sale of the same, to the persons and uses specified in the respective grants and reservations, under which such lands have become so vested ; and shall, at each annual meeting for choice of officers, exhibit an account of their proceedings, and a list of funds, receipts and expenditures.

Assessors, clerk and treasurer of parishes to be trustees of funds, to the uses originally prescribed.

The same chapter shall be further amended, in section, fifteen, by inserting, after the words, "the first meeting of the trustees," the words, "constituted by

otherwise made, be entitled to all the powers and privileges and be subject to all the liabilities contained in the seventy sixth chapter of the revised statutes. 1831, 519, § 2.

SECT. 4. Every bank shall have not less than five, nor more than nine directors, exclusive of such as may be appointed by the governor and council, as hereinafter provided, a majority of whom shall be residents in the county where such bank is established ; and none but a stockholder in such bank and a citizen of, and resident in the state, shall be eligible by the stockholders to that office, nor shall any two members of a copartnership, be directors of the same bank, nor shall any person be a director in two banks, at one and the same time. Number and qualifications of directors. 1831, 519, § 7.

SECT. 5. The directors shall choose one of their own number to act as president, and may make him such compensation as to them shall appear reasonable. The assent of a majority of the directors shall always be necessary for the transaction of business. Choice of president. Quorum. 1831, 519, § 7.

SECT. 6. The directors shall be chosen by ballot, annually, at a meeting of the stockholders, to be holden on one of the first fifteen days of the month of October, annually, at some place within the town where the bank is established, which time and place shall be designated by the directors for the time being, by giving public notice thereof, fourteen days previous to the meeting, in some newspaper printed in the county, and, if there be no newspaper printed in said county, then in some one published at the seat of government of the state ; and, in all cases wherein the bank shall be the owner of any of the shares of its stock, or where any shares of its stock shall be pledged to said bank, or held by any person or persons, as trustee for said bank, such shares as are so owned, pledged or held, shall in all cases be silent, and shall not be represented by any person for the purpose of having a voice in the business or other transactions of said bank. Annual meeting for choice of directors. 1831, 519, § 8.

SECT. 7. Every stockholder shall be entitled to vote, according to the number of shares he may hold, in the following proportions, that is to say : for one share, he shall have one vote, and for every two additional shares, he shall have a right to one vote more; provided always, that no one stockholder shall have more than twenty votes : absent members may vote by proxy, authorized in writing. Votes allowed to each stockholder. Proxies. 1831, 519, § 8.

SECT. 8. Directors may call special meetings of the stockholders, as often as they think the interest of the corporation may require it, giving the same notice as before provided : vacancies in the board of directors may be filled at any such special meeting, the purpose being specified in the notice. Special meetings. Vacancies in board of directors. 1831, 519, § 8.

SECT. 9. Every bank shall be kept in the town where originally established. Where the bank shall be kept. 1831, 519, § 12.

SECT. 10. No bank shall go into operation until one half, at least, of its capital stock shall have been paid in, in gold and silver money, which shall be in its vaults, and shall have been examined by three commissioners, appointed by the governor with the advice and consent of the council. Said commissioners, at the expense of the bank, shall examine and count the money actually in the vaults, and ascertain by the oaths of a majority of the directors, that such money has been paid in by the stockholders, toward the payment of When a bank may commence business. 1831, 519, § 3.

**SECT. 19.** Every bank, subject to such restrictions as are mentioned in this chapter, may loan and negotiate their moneys and effects, by discounting on banking principles on such security as their regulations may permit; provided, that no loan shall be made by any bank upon pledge of its own stock; nor shall any bank discount notes, bills of exchange, drafts or other security for the payment of money, without at least two responsible names as principals, sureties, or indorsers thereon (and for this purpose any firm composed of two or more persons are to be considered as one person) or adequate personal pledges, or collateral security; and no loan shall be made to any stockholder, until the amount of his shares shall have been paid into the bank. The aggregate of all the debts due from the directors as principals, indorsers or sureties, shall, at no time, exceed one third part of the amount of the capital of such bank; nor shall the debts due from any one director, as principal, indorser or surety, exceed eight per cent. of the capital stock.

Loans and discounts. Restriction on loans to directors. 1831, 519, § 2. 27.

**SECT. 20.** No bank shall vest, use or improve any of its moneys, goods, chattels or effects, in trade or commerce; but any bank may sell all kinds of personal pledges, lodged with it by way of security, to an amount sufficient to reimburse the sum loaned, with interest and expenses.

Not to engage in trade. 1831, 519, § 6. 7 Mass. 433.

**SECT. 21.** The directors shall make half yearly dividends of the profits of the bank.

Semi annual dividends. 1831, 519, § 9. Cashier, and other officers. 1831, 519, § 5.

**SECT. 22.** The directors shall appoint a cashier, and may appoint clerks and other officers for conducting the business of the bank, with such salaries as to them may seem meet; which cashier, clerks and other officers shall be removable at the pleasure of the directors.

**SECT. 23.** The cashier of any bank shall not at the same time be a director therein.

Cashier not to be a director. 1831, 519, § 9.

**SECT. 24.** The cashier and clerks, before they enter upon the duties of their respective offices, shall be sworn, and shall also give bonds, with two or more sureties, to the satisfaction of the directors, conditioned for the faithful performance of the duties of their respective offices. The bond of the cashier shall be renewed every year in the month of October, and in no case shall the bond, given by the cashier, be signed by any director of the bank for which he is appointed, nor be given for a less penal sum than twenty thousand dollars, nor greater than fifty thousand dollars; and said cashier or clerks shall have no voice in the choice of directors of said bank, and shall not represent, for themselves or by proxy, any shares in said bank.

Cashier and clerks to be sworn and give bonds. 1831, 519, § 10. 1838, 326, § 2. 13 Mass. 208.

**SECT. 25.** The cashier of every bank shall, on the application in writing of the proprietors of one fifth part of the capital stock thereof, call special meetings of the stockholders, by giving notice of such meetings in the manner provided for notifying the annual meeting; and, in case of refusal by such cashier, any justice of the peace in the county where the bank is established, may, on such application, call such meetings, giving the like notice.

Special meetings of stockholders, how called. 1831, 519, § 10.

**SECT. 26.** The total amount of debts, which any bank shall at any time owe, shall not exceed twice the amount of its capital

Limitation of amount of debts and credits. 1831, 519, § 5.

five dollars, to the amount of one quarter part of its capital, actually paid in, and no more ; and no bank shall issue or pay out, or receive in payment or on deposit, any bill or note less than one dollar, or on which is expressed any fractional part of a dollar, under penalty of one hundred dollars for each offence.

Fractional bills prohibited. 1831, 519, § 20. 1838, 326, § 7, 8.

SECT. 35. Any bank may allow a certain rate of interest for deposits made therein, if they think proper; but no bank shall issue any note, bill, check or other negotiable security, payable at a future day, or bearing interest.

Interest may be paid on deposits, but not to be payable on notes. 1831, 519, § 20. 1832, 32, § 1.

SECT. 36. No bank shall issue any bill, note, check or draft, redeemable at such bank in any other manner than by payment in specie; but every bank which shall issue any bill, note, check or draft, redeemable in any other manner than by payment in specie on demand, or payable at any place, other than the place where such bank is by law established and kept, shall be liable to pay the same in specie to the holder thereof, on demand at said bank, without a previous demand at the place where the same is made payable by its tenor.

Bills to be redeemable in specie at the bank. 1831, 519, § 20.

SECT. 37. Nothing contained in the preceding section shall extend to any draft or check for any balance due to said bank, nor to any check or draft drawn by an officer of any bank within this state, on any other bank, either within or without this state; but all such checks or drafts shall first be presented for payment at the place or bank, on which the same shall be drawn, before the same shall be demanded at the bank which issued them.

Exception as to drafts or checks. 1831, 519, § 20.

SECT. 38. If the officer of any bank shall neglect or refuse to redeem in gold or silver money, of the legal currency of the United States, any note, bill, check or draft, described in the two preceding sections, and demandable at such bank, or any other bill or note of such bank, on demand, in its usual banking hours, such bank shall be liable, after the expiration of fifteen days from such demand, to pay to the holder thereof, in damages, at the rate of twenty four per cent. by the year, for the time during which payment shall be delayed or refused, from and after said fifteen days.

Twenty four per cent. yearly damages for not redeeming bills. 1831, 519, § 11, 20. 1838, 326, § 3. 8 Mass. 445.

SECT. 39. The holder of any bill, note, check or draft, after demand made, as described in the preceding section, shall also be entitled to interest at the rate of six per cent. a year, from the time of such demand, until the rate of damages therein specified shall commence.

Interest to be paid till yearly damages commence.

SECT. 40. If the bank, at which payment of such bill, note, check or draft shall have been demanded and refused, shall, at any time afterwards, cause a legal tender to be made, at the place of residence of the person who made such demand, or of any known owner or assignee of such person, or of his agent, of the amount of such bill, note, check or draft, and all interest, damages and costs, which may have accrued at the time of such tender, all further interest and damages shall thereafter cease on account of the same.

Damages to cease after tender of the amount. 1831, 519, § 11. 5 Pick. 106.

SECT. 41. Whenever any bill, note, check or draft shall be presented for payment at any bank in this state, which issued and is liable to pay the same, under the provisions of the thirty eighth and thirty ninth sections of this chapter, and payment

Private property of stockholders liable in certain cases. 1836, 233, § 1. 8 Mass. 472.

thereof shall have been delayed or refused for the term of fifteen days, then the private property of the stockholders of said bank, to the amount of such shares as they may have acquired in said bank, after the taking effect of an act entitled, "an act further regulating banks and banking," passed March 29, 1836, shall be liable to be attached on mesne process, and levied upon by execution, in any suit therefor which may be commenced against said bank, as well for the damages, as for the original demand and interest and costs.

Directors to disclose names and interests of stockholders. 1836, 233, § 1.

SECT. 42. Any director of any bank, against which any suit may be commenced, as specified in the preceding section, on demand of the plaintiff in such suit, or on demand of any officer legally charged with the service of any writ or execution, as aforesaid, is hereby required to make and exhibit, to such plaintiff or officer, a true list of the stockholders, liable as aforesaid, with the amount of stock on account of which they are so liable.

Liability for neglect, on demand. 1836, 233, § 3.

SECT. 43. Should any director of any bank, on demand, as aforesaid, unreasonably neglect or refuse to make and exhibit a true list, as provided in the preceding section, then the private property of such director shall be liable to attachment on mesne process or execution, to the full amount of the judgment which may be, or has been recovered in such suit.

Loss from mismanagement of directors, how made up. 1831, 519, § 28.

SECT. 44. If any loss or deficiency of the capital stock in any bank shall arise from the official mismanagement of the directors of such bank, the persons who are directors at the time of such mismanagement, and guilty thereof, shall, in their individual capacities, be respectively liable to pay the same; and, in case of their inability to pay such loss or deficiency, the persons who are stockholders at the time of such official mismanagement, shall be liable therefor; provided, that no stockholder, other than directors guilty as aforesaid, shall be liable to pay a sum exceeding the amount of the stock, actually held by such stockholder at that time; and provided also, that such liability shall not continue beyond the term of one year from and after such time, as such stockholder may have bona fide transferred his stock, no process having, at the time of such transfer, been commenced against him on account of the same, either in law or equity.

Liability of stockholders, at expiration of charter. 1831, 519, § 29.

SECT. 45. The holders of stock in any bank, at the time when its charter may expire, shall be liable, in their individual capacities, for the redemption and payment of all bills, which may have been issued by said bank, and which shall remain unpaid, in proportion to the stock they may respectively hold, at the dissolution of the charter; provided, that such liability shall continue for the term of two years only from the time, that notice, that such charter has expired as aforesaid, shall have been given in some newspaper, specially authorized to publish the laws of the state.

Mode of enforcing payment from directors or stockholders.

SECT. 46. Any creditor of any bank, which may have sustained a loss or deficiency of its capital stock, through the official mismanagement of its directors, or any holder of any bill or bills issued by any bank, which bill or bills, after the expiration of its charter, shall remain unredeemed, and which may have been duly demanded of such bank, or at its last and usual place of transacting business,

may pursue his remedy and avail himself of the liabilities of its directors and stockholders, specified in the two preceding sections, by a bill in equity to be prosecuted in the supreme judicial court; but this section shall not be construed to deprive any person, injured by the misconduct or neglect of the directors or other officers of any bank, of his right to a special action on the case, on the principles of the common law, against such director or other officer.

SECT. 47. Any stockholder of a bank, who, by virtue of any of the provisions of this chapter, shall have been obliged to pay any debt or demand against said bank, or any part thereof, out of his individual property, may have a bill in equity, in the supreme judicial court, to recover the proportional parts of such sums of money, as he may have so paid, from the directors or other stockholders liable for the same, and such damages and costs as the court may decree.

Mode of obtaining contribution by a stockholder, who has been compelled to pay. 1831, 519, § 30. 1836, 233, § 2.

SECT. 48. Any corporation, which is or shall be a stockholder in any bank, shall be liable in its corporate capacity, to pay any loss or deficiency of the capital stock in such bank, arising from the official mismanagement of its directors, and shall also be liable for the payment and redemption of all bills, which shall have been issued by said bank, and which shall remain unpaid when its charter shall expire, in the same manner as individual stockholders are liable in their individual capacities; and such corporation may compel a contribution from other stockholders, in the manner prescribed in the preceding section.

Similar liabilities and remedies of corporations, when stockholders.

SECT. 49. No bank in this state shall be permitted to take any greater rate of interest or discount, on any note, draft or security, than at the rate of six per cent. a year, whether such loan be made in specie or otherwise, or agreement made to pay such loan in specie, or at a place other than the bank making such discount; but such interest or discount may be calculated and taken according to the established rules of banking; provided, that in discounting drafts, bills of exchange or other negotiable securities payable at another place, the bank so discounting the same, may, in addition to the said interest, charge the then existing rate of exchange, between the place of discounting and the place where any such security may be payable.

Bank interest limited to six per cent. 1831, 519, § 20. 7 Mass. 433. 9 Mass. 49. 10 Mass. 284.

SECT. 50. Upon any requisition of the legislature, each bank shall loan to the state a sum, not exceeding five per cent. of its capital stock at any one time, reimbursable by five annual instalments, or at any shorter period, at the election of the state, with the annual payment of interest, at a rate not exceeding five per cent.; but the state shall not be entitled to demand, of any bank, loans, which shall together, at any one time, exceed one tenth part of its capital; and the faith of the state is pledged for the repayment of the same.

Right of the state to require loans from banks. 1831, 519, § 13.

SECT. 51. Whenever a loan shall be required of any bank as aforesaid, the treasurer of the state shall give notice in writing to the president or cashier thereof, of the amount which is to be furnished by such bank, and demand a loan of the same, conformably to the provisions of this chapter; which notice and demand shall be accompanied by a copy of the act or resolve of the legislature requir-

Requisition, how made. 1831, 519, § 13.



**SECT. 56.** Whenever a return shall be made by any cashier, as provided in either of the four preceding sections, a majority of the directors of each bank shall certify, under oath, that the books of the bank indicate the state of facts so returned by their cashier, and that they have full confidence in the truth of said return.

Cashier's return to be verified by the directors. 1831, 519, § 22.

**SECT. 57.** For neglect or refusal to make any such return, by such cashier and directors of any bank, such bank shall forfeit, for each offence, a sum not exceeding one thousand dollars, to the use of the state, to be recovered by the treasurer thereof.

Penalty for not making returns. 1833, 80, § 1.

**SECT. 58.** The secretary of state shall furnish to the cashier of every bank, in the month of March or April annually, at the expense of the state, four printed copies of each of the forms of the returns, required by the fifty second and fifty third sections of this chapter.

Secretary of state to furnish blanks for returns. 1831, 519, § 23.

**SECT. 59.** The secretary of state, after receiving the returns required by the fifty third section of this chapter, shall, as soon as may be, cause to be prepared and printed a true abstract from those returns, with each column of such abstract footed up; and transmit, by mail, one copy thereof to the cashier of each bank in the state; and further cause the same to be published in the state paper, and such other papers as the governor and council may direct.

To publish abstracts, and transmit a copy to each bank. 1831, 519, § 24. 1833, 80, § 2. 1838, 325, § 5.

**SECT. 60.** The governor, with the advice of the council, shall appoint two commissioners, who during their continuance in office, shall not hold any office in any bank in this state, and whose duty it shall be, at least once a year, and as much oftener as the governor and council shall deem it expedient, to inquire into and examine the transactions of the several banks incorporated in this state, and to ascertain the condition of the same, and whether there has been any departure, by brokerage or otherwise, from the ordinary business of banking associations; and said commissioners shall make report of their doings annually to the governor and council, to be laid before the legislature. Said commissioners shall be removable, and vacancies may be filled, at pleasure, by the governor and council.

Bank commissioners; power and duties. 1831, 519, § 31. 1836, 231, § 4.

**SECT. 61.** The bank commissioners shall have power to visit every bank in this state, as often as they deem it expedient for the public safety, and shall thoroughly inspect and examine all the affairs of said corporations, and make any and all such inquiries as may be necessary to ascertain the condition of said corporations, and their ability to fulfil all the engagements made by them; and said commissioners may summon and examine, under oath, all the directors, officers or agents of said corporations, and such other witnesses as they may think proper, in relation to the affairs, transactions and condition of said corporations; and any such director, officer or agent, or other person, who shall refuse, without justifiable cause, to appear and testify, when thereto required as aforesaid, or who shall obstruct, in any way, any commissioner in the discharge of his duty, as prescribed in this chapter, shall, on conviction, be subject to a fine, not exceeding one thousand dollars, or imprisoned for a term, not exceeding two years.

Power to examine banks. May examine officers on oath. Punishment for refusal to testify.

**SECT. 62.** If, upon examination of any bank, said commissioners shall be of opinion that the same is insolvent, or that its condition is such as to render its further progress hazardous to the public,

Proceedings by commissioners, if they deem a bank unsafe.

**SECT. 66.** If, at any time, the officers of any bank shall refuse or neglect to pay any of its bills, when duly presented at their banking house for payment, in their usual hours of business, or to pay any deposits made by any person, on demand made in such hours, and, for the space of fifteen days thereafter, shall neglect to pay or tender payment of such bills or deposits, in the manner described in section, forty, of this chapter, the holder of such bill, or the person making such deposit, may make complaint thereof, in writing, to any judge of the supreme judicial court, whose duty it shall be thereupon to cause the president or cashier of such bank, to be notified to appear before him at such time and place as he may appoint, to answer to such complaint, and show cause against further proceedings thereon.

Application to a judge of the supreme judicial court, if a bank refuse to pay its bills.  
1831, 519, § 33.

**SECT. 67.** If such president or cashier, or other agent of such bank, duly authorized, shall not appear at such time and place, or, appearing, shall not show sufficient cause against further proceedings, said judge shall appoint three disinterested receivers, and require of them a bond to the said bank for the faithful discharge of their trust, to his satisfaction, in such sum as he shall determine, to be delivered to said bank for their use.

Court may appoint receivers; who shall give bond.  
1831, 519, § 33.

**SECT. 68.** Such receivers shall immediately demand and receive, of the officers of such bank, all its real and personal estate, with all its books, papers and evidences of debts due such bank, delivering to the officers their receipt, containing accurate lists and memoranda of such estate, books and debts; and shall proceed with due diligence to dispose of all or any part of such property, and collect the debts, and, with the proceeds thereof, to pay the demands against such corporation.

Their duties.  
1831, 519, § 33.

**SECT. 69.** The receivers aforesaid may sell at public auction, after giving thirty days' notice in the manner prescribed in chapter, ninety four, of the revised statutes, for notice on the sale of real estate of banks taken on execution, and with like power to adjourn the sale, any real estate of said bank, and any mortgages of real estate due to said bank, and make and deliver to the highest bidder, in the name of the corporation, any deed or other instrument, necessary for the due conveyance of such real estate or mortgages, with the debts thereby secured; and the purchaser shall have the same rights and powers, as a purchaser of real estate, and mortgages taken on execution as aforesaid.

May sell real estate and mortgages.  
1831, 519, § 34.

**SECT. 70.** Said receivers may collect the debts due and owing to such bank, and commence and prosecute in the name of such bank, or in their own names and capacity as receivers, any action, necessary for the collection of said debts, or they may sell or assign said debts with the evidences thereof, as they shall think expedient.

May collect or sell any of the debts due to the bank.  
1831, 519, § 34.

**SECT. 71.** The authority, given as aforesaid to said receivers, may be revoked on a like application to any judge of the supreme judicial court, as is provided in section, sixty six, if he shall see cause after due notice to such receivers and hearing the parties.

Revocation of authority of receivers.

**SECT. 72.** Either party, aggrieved by the determination of such judge, whether in originally appointing such receivers, or revoking their authority, may have the same revised, and, if a sufficient

Appeal from any order of a judge, to the whole court.

ions in this chapter, nor prevent such bank from paying out the bills of foreign banks, received in its usual course of business, and the circulation of which is not otherwise prohibited by law.

**SECT. 80.** No person shall issue any drafts, bills or promissory notes or other evidences of debt, payable to bearer or order, as a private banker, for the purpose of loaning them or putting them in circulation, as money.

No person to issue bills as a private banker, to be circulated as money. 1836, 231, § 2. Penalty for violating the three preceding sections. 1821, 147, § 1. 1836, 231, § 3.

**SECT. 81.** If any body corporate or private company, or individual, shall be guilty of any or either of the offences, described in the three last preceding sections, such offender shall forfeit one thousand dollars, for each and every such offence; to be recovered by indictment for the use of the state, or by action of debt, one half to the use of the state, and the other half to the person who may first sue for the same.

**SECT. 82.** The following offences by officers, stockholders or servants of banks in this state, committed with a fraudulent intent to injure any creditor, stockholder, holder of bank notes issued, or to be issued by such bank or other person, are hereby declared to be high misdemeanors, and the persons guilty thereof, shall, on conviction, be punished by fine, not exceeding five thousand dollars, imprisonment in the county jail, not exceeding one year, confinement in the state prison to hard labor, not exceeding ten years, or any or all of said punishments, according to the aggravation of the offence:

Punishment for frauds and embezzlement. 1825, 315. 1831, 519, § 21.

*First.* If any such person shall convert to his own use or deliver to any other person, or to his check or order, any funds or evidence of debt or other property, belonging to the bank or deposited therein;

*Secondly.* If he shall issue, or aid in issuing, any bank notes or other evidence of debt, obligatory on said bank, with the intent that the same shall not be paid;

*Thirdly.* If he shall become indebted to such bank for a valuable consideration with like intent, or shall aid or abet any other person so doing;

*Fourthly.* If he, on behalf of the bank, shall loan any money or deliver any valuable property, belonging to such bank or deposited therein, to any stockholder or other person;

*Fifthly.* If he shall make any dividend of the funds or effects of such bank, amongst the stockholders or any of them, beyond the profits actually accrued to such bank, or aid therein, thereby diminishing the capital of said bank.

**SECTION 9.** The ninety first chapter shall be amended, in section, four, after the words "limited to," by striking out the word "such," and inserting, instead thereof, the word "any;" so that the said fourth section, as amended, will be as follows:

R. S. ch. 91.

**SECT. 4.** When any contingent remainder or executory devise, or other estate in expectancy, has been so granted or limited to any person, that, in case of his death before the happening of the contingency, the estate would descend to his heirs in fee simple, such person may, before the happening of the contingency, sell, assign or devise the premises, subject to such contingency.

Owner of a contingent remainder or executory devise may convey it.

**SECTION 10.** The ninety fourth chapter shall be amended, by inserting, at the end of section thirty four, the following words:

R. S. ch. 94.

Right of redemption, where real estate of banks or manufacturing corporations has been sold on execution. 1838, 332, § 1, 2.

And such corporation shall have the right to redeem any lands, and, if mortgaged, the debts secured thereby, sold by virtue of the provisions of this section, within the time and in like manner, and with like remedies to compel a reconveyance, as are provided in the forty first and forty second sections; and such right of redeeming shall be liable to attachment on mesne process, and seizure and sale on execution, as provided in the forty third section, for the attachment and sale of the right of redeeming an equity of redemption; reserving to the corporation the same right of redeeming from the purchaser at said second sale.

The same chapter shall be further amended, by inserting, at the end thereof, a new section, as follows:

Right, by contract, to a deed of real estate may be sold on execution. Right of redemption of certain interests in real estate. Such right of redemption may be sold on execution. 1829, 431, § 1, 2. 1833, 87.

SECT. 50. All the right and title, to a conveyance of real estate, by virtue of a bond or contract which any debtor may have, may be taken and sold on execution, in the manner prescribed in the thirty sixth and four following sections; and any such right, so sold, and also any right, title and interest, which any person owns, in virtue of a possession and improvement, having been sold on execution, as provided in the said thirty sixth and four following sections, may be redeemed from the purchaser, or person holding under him, by like proceedings, on the same conditions, and with the same remedies to compel a reconveyance thereof, as are provided in the forty first and forty second sections; and this right to redeem from the purchaser shall be liable to attachment on mesne process, and seizure and sale on execution, as provided in the forty third section, for the attachment and sale of the right of redeeming an equity of redemption; and, in all cases, where a right to redeem from a former sale or levy has been sold on execution, the debtor shall have the same right of redeeming it, as is allowed upon the first sale of rights in equity of redeeming mortgaged real estate.

R. S. ch. 96.

SECTION 11. The ninety sixth chapter shall be amended in the seventh section, by inserting, at the close thereof, the following:

Supreme judicial court to control the records and documents of the supreme judicial court of Massachusetts, now remaining in this state. 1820, 54, § 1.

All records and documents of the supreme judicial court of Massachusetts, previous to the separation of Maine, now remaining in the several counties in this state, shall remain under the control and authority of the supreme judicial court of this state, in the same manner and for the same purposes, as the records and documents of their own doings; and the clerks of the same court shall have the like power in relation to the one, as the other of those records and documents.

R. S. ch. 97.

SECTION 12. The ninety seventh chapter shall be amended in the thirteenth section, by inserting, after the word "town," the following, "or in any libel for forfeited goods originally commenced in the district court"; so that the section, as amended, will be as follows:

Appeal in cases of libel for forfeited goods. 1821, 81, § 2.

SECT. 13. Any party, aggrieved at the judgment of any district court, on any demurrer or agreed statement of facts, or in any personal action, wherein issue in fact has been joined and a verdict given, in which the debt or damage demanded exceeds two hundred dollars, or in any action of replevin, or action of trespass on lands, writ of entry or of dower, or action against a town, or in any libel for forfeited goods, originally commenced in the said court,

may appeal therefrom to the next supreme judicial court to be held for the same county.

The same chapter shall be further amended in the fourteenth section, by inserting, at the close thereof, the following words :

If there shall not be, in the opinion of the court, a reasonable time for the party appealing to produce the sureties required, during the term of the court, the court may designate some justice of the peace, to take such recognizance, within ten days after the adjournment of the court, and the court shall order a stay of execution accordingly ; and the recognizance, if so taken, and filed with the clerk, shall be as valid, as if taken in court.

Recognizance on an appeal may be taken by a justice of the peace in certain cases. 1831, 505, § 2, 3.

SECTION 13. The ninety ninth chapter shall be amended in the twenty first section, by striking out the words "or scire facias"; so that the section, as amended, shall be as follows :

R. S. ch. 99.

SECT. 21. The party, for whose benefit any judgment shall have been rendered by the commissioners of any county, shall have like remedy for the same and interest, by an action of debt upon such judgment, before any court of competent jurisdiction, as is provided for judgments recovered before the judicial courts.

Action of debt on a judgment of a court of county commissioners.

SECTION 14. The one hundred and fourth chapter shall be amended, in the twelfth section, by striking out, after the words "official bond," the following words : "for any neglects or misdoings, which may occur after such new bond shall have been filed and accepted," and inserting the last mentioned words at the close of the section ; so that the section, as amended, shall be as follows :

R. S. ch. 104.

SECT. 12. Whenever any surety upon the official bond of any sheriff or coroner, or the heirs, executors or administrators of such surety, shall petition the county commissioners, in the county of such sheriff or coroner, to be discharged from such bond, the court shall cause such sheriff or coroner to be served with an attested copy of the petition, and may require him to give a new bond to their satisfaction ; and, upon such new security being given, such surety or his legal representatives shall be free from any further responsibility on such bond, for any neglects or misdoings, which may occur after such new bond shall have been filed and accepted.

New bond may be required of a sheriff or coroner on application of his sureties.

The same chapter shall be amended in the twenty seventh section, by inserting, after the word "deputy," the words "coroner or constable"; so that the section, as amended, shall be as follows :

SECT. 27. Any sheriff or his deputy, coroner or constable, who shall unreasonably refuse or neglect to pay to any person moneys, received by him upon execution, to the use of such person, upon demand made therefor, shall pay five times the lawful interest of such money, so long as he shall unreasonably detain it.

Liability, if coroner or constable detain money collected, after demand.

SECTION 15. The one hundred and fifth chapter shall be amended in the eighteenth section, by striking out the words "as heir, legatee, creditor or debtor, or," and inserting, instead thereof, the words "either in his own right, or in trust, or in any other manner, or be" ; and by inserting, after the words "jurisdiction of such estate," the following words : "or if he be interested at the time of his appointment to office" ; and by inserting, at the end of said section, the following words : "and in all cases, where, by reason of the interest of the judge, or for any other cause, an estate shall be settled in an adjoining county, the register of probate of such adjoining county shall transmit to the probate office of the county where such estate should otherwise have been settled, copies of all records relating to said estate, to be recorded on the records of the county where such estate belongs" ; so that the said eighteenth section, as amended, will be as follows :

R. S. ch. 105.

laration shall be taken and deemed to be true; and the court shall thereupon give such damages as they shall find, upon inquiry, that the plaintiff has sustained; unless the plaintiff shall move to have a jury to inquire into the damages, in which case the court shall enter up judgment for such damages as the jury shall assess," so that said second section, as amended, shall be as follows:

**SECT. 2.** When the defendant shall have been duly served with process and return thereof made, according to the mandate of the writ, or order of a judge of the court, indorsed thereon, and he shall not appear by himself or attorney, his default shall be recorded, and the charge in the declaration shall be taken and deemed to be true; and the court shall thereupon give such damages, as they shall find, upon inquiry, that the plaintiff has sustained, unless the plaintiff shall move to have a jury, to inquire into the damages, in which case the court shall enter up judgment for such damages as the jury shall assess. But such default shall be erased, or taken off by leave of court, or without such leave, if the defendant shall appear in court, in person or by attorney, at any time before the jury are dismissed, and pay to the plaintiff such costs as the court shall order. And if, by the return of the officer or otherwise, it appear to the court, that the defendant has not had sufficient notice, they may order such further notice as they may think proper.

Default of defendant, if he fail to appear. Assessment of damages and judgment. Proviso. 1821, 59, § 15.

The same chapter shall be further amended, by inserting, at the end of section, twenty two, the following words:

And in all actions of trespass upon lands, wherein the defendant, by his plea or brief statement, shall disclaim all right, title and interest in the land upon which the trespass is alleged to have been committed, and declare that the trespass was involuntary, or by negligence or mistake, and that he had tendered or offered sufficient amends therefor, before the action was commenced, or brings money into court to satisfy the damage the plaintiff has sustained, with costs, if upon trial it appear, that such trespass was involuntary, or by negligence or mistake, and the jury shall not assess greater damages for the trespass than the money tendered or brought into court therefor, the defendant shall recover of the plaintiff his reasonable costs. And any person, after the commencement of a suit against him, and before the entry thereof in court, shall have the same right to tender payment of the amount due to, the plaintiff or his attorney in the action, and legal costs to the time of such tender, and with the same effect, as before the commencement of the suit. Provided, that in actions brought against towns, under the provisions of the eighty ninth section of chapter, twenty five, the defendant towns shall have the same right, to avail themselves of a tender before the commencement or entry of the action, or an offer of judgment in court, for any specified sum as damages, as is by law provided in cases of contract.

Tender in cases of involuntary trespass: also after a suit is commenced, and before entry: also in actions against towns for damages in consequence of defects in roads. 1821, 59, § 18. 1822, 182.

The same chapter shall be further amended, in section one hundred and one, by inserting, after the word "filed," the following words: "in the supreme judicial court"; so that the said one hundred and first section, as amended, will be as follows:

**SECT. 101.** When a motion is made and filed in the supreme judicial court, that a verdict may be set aside, as being against law, or the direction of the court, or against evidence, the whole evi-

Proceedings on motion to set aside a verdict in the supreme judicial court.

same ought to have been entered ; and no attachment made, and no bail taken, shall be revived or continued in force, by the entry of any such appeal or complaint by the original plaintiff, as provided in the two preceding sections ; but such attachment and bail shall remain discharged.

bail not continued by entry of the appeal. 1821, 57, § 7.

**SECTION 23.** The one hundred and twenty fifth chapter shall be amended, by adding, at the end of the nineteenth section, the following words : R. S. ch. 125.

When such mortgagee or person claiming under him, being out of the state, or whose residence is unknown, shall have proceeded according to the provisions of the fifth section of this chapter, for the purpose of foreclosure, the mortgager, or other person having a right to redeem, may file his bill or petition, as provided in section, sixteen, and may at the same time pay to the clerk of the court the sum due, and the court shall order such notice to be given as they may judge proper ; and such payment shall have the like effect and force, as a tender of payment made before the commencement of the suit.

If mortgagee or his assignee be out of the state, bill in equity may be filed on payment of redemption money to clerk of the court.

**SECTION 24.** The one hundred and fortieth chapter shall be amended, by inserting, at the end thereof, a new section, in the following words : R. S. ch. 140.

**SECT. 38.** When any insane person is arrested or imprisoned on mesne process or execution in any civil suit, any judge of the supreme judicial court or district court, or any judge of probate within his county, on application, may inquire into the case, and, if he think proper, may issue a writ of habeas corpus, and cause such person to be brought before him for examination; and, after notice to the creditor or attorney, if either be living in the state, and a hearing thereon, if it shall be proved to the satisfaction of said judge, that the person is insane, he may discharge such person from arrest or imprisonment ; and, in that case, the creditor shall have a right to make a new arrest, upon the same demand, whenever such debtor shall become of sound mind. But, if such person be arrested on the same demand a second time before he becomes of sound mind, and be discharged again for the same reason, his body shall forever thereafter be exempted from arrest therefor.

Habeas corpus may issue for discharge of an insane person, arrested on mesne process or execution. Effect thereof.

**SECTION 25.** The one hundred and forty fourth chapter shall be amended, in section, one, by striking out the words, "to her satisfaction;" so that the said first section, as amended, will be as follows : R. S. ch. 144.

**SECT. 1.** When a woman is entitled to dower, and it is not set out to her by the heir or tenant of the freehold, according to the intendment of the law, nor assigned to her by the judge of probate, she may recover the same by a writ of dower, in the manner hereinafter prescribed.

Right of a widow to sue for dower.

**SECTION 26.** The one hundred and fifty sixth chapter shall be amended, by adding at the end of the chapter, a new section, as follows : R. S. ch. 156.

**SECT. 16.** Upon any conviction of burglary, robbery or larceny, unless it be before a justice of the peace for larceny, the court may order a meet recompense to the prosecutor, and also to the officer, who has secured or kept the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the county treasurer, and charged by him to the state.

Compensation for expenses of prosecutor to conviction, for larceny, &c. and officer. 1821, 7, § 16.

tion, shall take effect and be in force from and after the thirty first day of July, in the year one thousand eight hundred and forty one; and the provisions of the third section of this act shall take effect and be in force from and after the first day of January, in the year one thousand eight hundred and forty two.

IN THE HOUSE OF REPRESENTATIVES, April 14, 1841.

This bill, having had three several readings, passed to be enacted.

JOSIAH S. LITTLE, *Speaker*.

IN SENATE, April 15, 1841.

This bill; having had two several readings, passed to be enacted.

R. H. VOSE, *President*.

April 16, 1841. Approved.

EDWARD KENT.

## PUBLIC LAW

Passed at the Extra Session, 1840.

AN ACT IN RELATION TO ELECTIONS. [CHAP. 89.]

**SECTION 1.** *Be it enacted by the Senate and House of Representatives in Legislature assembled,* That the qualified electors of unincorporated places may organize themselves into plantations, for the purpose of elections, in the following manner:—Any three or more of the inhabitants of any unincorporated place may apply, in writing, to one or more county commissioners of the county in which such place is situated, whose duty it shall be to issue his warrant to one of said applicants, directing him to notify and warn a meeting of the electors of said place, within such limits as shall be described in such warrant, at some specified central place, by posting up notice thereof and of its object, in two or more public places in said unincorporated place, seven days before the day of said meeting. And at the time and place appointed, a moderator shall be chosen by ballot, whose duty it shall be to preside at said meeting. And three assessors and a clerk shall also be chosen by ballot at the same time, who shall be sworn by the moderator or a justice of the peace. And the limits of all plantations, so organized, shall be described by said assessors, so chosen, and forwarded to the secretary of state, and by him recorded.

Application and mode of organization.

Officers to be chosen at the first meeting.

Limits of plantation to be described and forwarded to the secretary of state.

**SECT. 2.** *Be it further enacted,* That said assessors shall make out an alphabetical list of all such inhabitants of said place, as shall appear to be qualified electors by the constitution of this state, or of the United States, and post up said list in two or more public places in said unincorporated place, seven days at least next before the day of the election. They shall call a meeting of the inhabitants aforesaid, at some convenient and central place to be designated in the warrant therefor, by posting up notice thereof seven days before the day of election, which election shall be on the same day it is

List of voters to be posted up seven days before the election.

Mode and time of calling the meeting.



Assessors to be in session to receive evidence of qualification of voters.

Duty of assessors and clerk.

Clerk to make a copy of the list of votes and names of voters, &c.

Annual meeting to be held in March or April.

Liabilities for neglect or misconduct.

in the class or county of which said place may be a part. And it shall be the duty of said assessors to be present, at some convenient place to be stated in the warrant calling the meeting, on the day of election, as long before the hour of meeting as they shall deem necessary, to receive evidence of the qualifications of electors, and to amend their list accordingly.

SECT. 3. *Be it further enacted.* That said assessors shall preside impartially at said meeting and receive the votes of all qualified electors present, sort, count and declare them in open plantation meeting, and in the presence of the plantation clerk, who shall form a list of persons voted for, with the number of votes for each person against his name, [and] shall make a fair record thereof in the presence of the assessors, and in open plantation meeting. And the clerk shall make out fair copies of the list of votes, and names of voters, to be attested by the assessors and the clerk, and be sealed up in open plantation meeting, and cause the same to be delivered, within the time required by the constitution, to the respective authorities, whose duty it may be to receive the same. And votes, so thrown, shall be received and allowed for electors of president and vice president, for representative to congress, for governor, senators, representatives to state legislature, and county officers, in the same manner as votes thrown in any town in said class or county.

SECT. 4. *Be it further enacted,* That the organization, as aforesaid, of any plantation, for the purpose aforesaid, shall continue, the assessors and clerk afterwards be chosen, and the meetings be called and held annually in March or April, in the same manner in all other respects, as in towns. And said officers of said plantation shall be liable to all the penalties for official neglect or misconduct, respectively, that selectmen and clerks of towns are, by law; and the voters of said place shall be liable to the same penalties, that the voters of towns are in like circumstances.

SECT. 5. *Be it further enacted,* That this act shall take effect from and after its approval by the governor.

[APPROVED OCTOBER 2, 1840.]

## PUBLIC LAWS

Passed in the year 1841.

### AN ACT IN RELATION TO ORNAMENTAL TREES. [CHAP. 107.]

Towns may authorize part of their highway tax, not exceeding five per cent. to be expended for ornamental trees.

*Be it enacted by the Senate and House of Representatives in Legislature assembled,* That the surveyors of highways are hereby authorized, under the direction of the selectmen, mayor and aldermen of their respective towns and cities, to expend an amount, not exceeding five per cent. of the tax committed to said surveyors for

collection, in planting trees for shade and ornament, about the public burying grounds, commons, squares and highways, within the limits of their respective districts ; provided, their respective towns and cities shall vote in favor of such expenditure, at their annual meeting in the month of March or April.

[APPROVED MARCH 2, 1841.]

AN ACT ADDITIONAL TO AN ACT, TO ABOLISH THE MUNICIPAL COURT IN THE CITY OF BANGOR, AND ESTABLISH A POLICE COURT FOR SAID CITY. [CHAP. 111.]

SECTION 1. *Be it enacted by the Senate and House of Representatives in Legislature assembled,* That the police court for the city of Bangor shall have, in addition to the jurisdiction given in the act to which this is additional, original and exclusive jurisdiction in all actions, civil and criminal, cognizable by justices of the peace, returnable within said city, excepting in such as the judge of said court may be interested. And said judge shall have jurisdiction of all cases of simple larceny, where the property, alleged to have been stolen, shall not exceed in value the sum of twenty dollars ; and shall have power to try the same, and award sentence upon conviction, by fine not exceeding twenty dollars, and by imprisonment in the common jail, for a term not exceeding thirty days, in manner provided by law.

Civil and criminal jurisdiction of the court.

SECT. 2. *Be it further enacted,* That it shall be the duty of the judge of said court, to collect and receive all fees, which are, or may be by law payable to said court, and shall render an account thereof upon oath, and shall pay over the same, to the city treasurer, quarter yearly. And the said judge shall give bond to the city treasurer, and his successor in office, with sufficient surety, in such penal sum as the mayor and aldermen of said city may determine, conditioned for the faithful performance of the duties required of him by this, and the second section of the act to which it is additional. And the mayor, or such committee as he may appoint for that purpose, may inspect and examine the books, records and papers, belonging to said court ; and it shall be the duty of said judge to exhibit the same, and give such information relative thereto, as may be required of him from time to time, as aforesaid.

Judge to account for all fees to the city treasurer, and to give bond.

Right of mayor to examine books, records, &c.

SECT. 3. *Be it further enacted,* That the judge of said court shall receive a yearly salary of four hundred dollars, in full compensation for his services, instead of the salary now established by law, to be paid quarterly out of the city treasury : provided however, that the salary shall, in no year, exceed the amount of fees, accruing in said court for the same year, so accounted for by the judge, as in this act is provided.

Salary of judge.

SECT. 4. *Be it further enacted,* That no justice of the peace, within the city of Bangor, shall exercise any civil or criminal jurisdiction, except under the authority of the United States, in any civil or criminal process, wherein said judge is not a party or interested ;

Jurisdiction of justices of the peace in Bangor, restricted

and also excepting the cases provided for in the fourth section of the act to which this is additional ; or accept or receive any fee therefor ; under a penalty of twenty dollars, to be recovered by indictment in any court proper to try the same, for the use of the city of Bangor.

SECT. 5. *Be it further enacted,* That this act shall take effect, and be in force, from and after its approval.

[APPROVED MARCH 3, 1841.]

AN ACT TO SUSPEND THE OPERATION OF THE REVISED STATUTES.

[CHAP. 144.]

Revised statutes and general repealing act take effect, August 1, 1841. Exception.

SECTION 1. *Be it enacted by the Senate and House of Representatives in Legislature assembled,* That the operation of an act, passed on the twenty second day of October, in the year, one thousand eight hundred and forty, entitled "an act for revising, arranging and amending the public laws of the state," and of another act, passed on the same day, entitled "an act to repeal all the acts, which are consolidated in the revised statutes," shall be suspended, until after the thirty first day of July next ; except, as provided in the following section.

Chapter, sixteen, relating to the militia, to take effect, January 2, 1842.

SECT. 2. *Be it further enacted,* That chapter, sixteen, entitled "of the militia," in the second title of the act first before mentioned, and so much of the last mentioned act, as provides for the repeal of certain acts concerning the militia, which were revised or consolidated in the said chapter, shall not be in force, until from and after the first day of January next, notwithstanding the provisions of the preceding section.

SECT. 3. *Be it further enacted,* That this act shall take effect immediately upon its approval by the governor.

[APPROVED MARCH 31, 1841.]

AN ACT IN ADDITION TO AN ACT, TO REGULATE THE JURISDICTION AND PROCEEDINGS OF THE COURTS OF PROBATE. [CHAP. 149.]

When an executor, &c. is appointed judge of probate for the same county, jurisdiction transferred to the most ancient adjoining county.

SECTION 1. *Be it enacted by the Senate and House of Representatives in Legislature assembled,* That, whenever a person being an executor, administrator or guardian, whose trust shall not have been fully executed at the time of appointment, has been, or shall be appointed and qualified as judge of the court of probate, in and for the county wherein his letters of executorship, administration or guardianship were granted, it shall be lawful for said executor, administrator or guardian to continue and fulfil his said trust ; and all the proceedings and acts, to be had and done subsequent to his appointment as judge, by said executor, administrator or guardian in and by a court of probate, touching his said trust, shall be had and

done by a court of probate in the most ancient next adjoining county; and such courts of probate in such adjoining counties are vested with jurisdiction thereof: but the record of said proceedings and acts shall be made in the registry of probate in the county, wherein the letters aforesaid are recorded.

Records, where kept.

SECT. 2. *Be it further enacted*, That the judges of probate, in the respective counties, may appoint special courts, whenever cases occur which, in their judgment, render it necessary, in addition to the fixed days; which special courts are to be made known by public notification; and may adjourn their regular courts to any time, not beyond the next regular court day: and, in case of the absence of the judge, by reason of sickness or otherwise, or vacancy in the office of judge, the register of probate may adjourn the court by posting notification thereof at the probate office, till the judge can attend.

Power of judge to appoint special courts, or to adjourn a stated court. Register may adjourn in the absence of the judge.

SECT. 3. *Be it further enacted*, That, whenever any judge of any court of probate, within this state, may have been, or shall hereafter be removed from office by death or otherwise, and thereby have been prevented from signing any decree or decrees, by him made as judge of probate, or from certifying any other official act, by him performed, it shall be the duty of the register of probate in such county, to make record thereof in such manner, as if the same had been duly signed and certified by said judge in his life time, or while in office. And it shall be the duty of the judge of probate, who shall be appointed to fill the vacancy occasioned as aforesaid, upon accepting the trust, to examine said decrees and certificates, as soon as may be, and if the same, and the proceedings connected therewith, shall be found correct, and otherwise conformable to law, it shall be his duty to confirm and approve the same; and when so confirmed, shall be valid to all intents and purposes, and to the same extent, as they would have been, if the same had been duly signed by his predecessor, while in office.

Judge may confirm and sign decrees of his predecessor, not authenticated in form, on account of death, or removal from office.

SECT. 4. *Be it further enacted*, That this act shall take effect and be in force, from and after its approval by the governor.

[APPROVED APRIL 6, 1841.]

AN ACT, PROVIDING FOR THE APPOINTMENT OF A PERMANENT CHAPLAIN FOR THE MAINE STATE PRISON. [CHAP. 155.]

SECTION 1. *Be it enacted by the Senate and House of Representatives in Legislature assembled*, That the governor, with advice of council, shall annually appoint a suitable person, to officiate as chaplain of the state prison, whose duty it shall be, to preach to the convicts two sermons, or perform other religious services equivalent thereto, each sabbath in the year; to visit the sick; to superintend the sabbath school; and, daily during the week, by private conversation with the prisoners, to use his utmost efforts for their moral and religious improvement. He shall also, if opportunity may offer, at other times, instruct them in the rudiments of learning.

Chaplain to be annually appointed. His regular duties.

SECT. 2. *Be it further enacted*, That the salary of the chaplain

His salary.

of the state prison shall be three hundred dollars per annum, instead of the salary now established by law ; commencing on the first day of April, in the year of our Lord, one thousand eight hundred and forty one.

[APPROVED APRIL 9, 1841.]

AN ACT TO PREVENT BETTING OR WAGERING ON ELECTIONS.

[CHAP. 172.]

**SECTION. 1.** *Be it enacted by the Senate and House of Representatives in Legislature assembled,* That any person or persons, who shall bet or wager any sum or sums of money upon any election, or the event of any election of president of the United States, or governor of this state, or any member of congress, or of any man to any office, shall forfeit a sum or sums equal to the sum or sums that he or they shall so bet or wager, to the use of the city, town or plantation, in which the person or persons, so betting or wagering, shall reside at the time of such betting or wagering, to be recovered by action of debt in any court competent to try the same.

Forfeiture of a sum equal to the wager, to the town.

Party losing may recover back the sum lost.

Mayors of cities and treasurers of towns, &c. to sue for the penalty, named in the first section.

Goods, &c. pledged on wagers, forfeited to towns, &c.

Conveyances of real estate, in pursuance of wagers, void. Value thereof forfeited, &c.

**SECT. 2.** *Be it further enacted,* That, if any person or persons shall, after the passage of this act, receive any sum or sums of money upon any bet or wagering aforesaid, he or they, so receiving, shall be liable to pay, to the person or persons losing the same, the amount so received ; to be recovered by action of debt in any court competent to try the same, with interest from the time the money was so received.

**SECT. 3.** *Be it further enacted,* That it shall be the duty of the mayors of the several cities, and the treasurers of the several towns and plantations in this state, to sue for and recover any sum or sums of money which may be forfeited by the first section of this act, in their respective cities, towns and plantations.

**SECT. 4.** *Be it further enacted,* That any person or persons, who shall bet or wager upon any elections, named in the first section of this act, any goods, chattels, or personal estate of any kind, shall forfeit the same to the use of the city, town or plantation where he or they may reside at the time of betting or wagering ; and the mayors of the several cities, and the treasurers of the several towns and plantations are, respectively, empowered and required to demand, and sue for by action of trover, any personal chattel, that may be so forfeited in their respective cities, towns and plantations.

**SECT. 5.** *Be it further enacted,* That all deeds or other instruments, by which any real estate shall hereafter be conveyed on account of, or by reason of, or in fulfilment of, or in compliance with, any betting or wagering upon any election, mentioned in the first section of this act, shall be void and of no effect ; and the person or persons so conveying shall be liable to pay to the mayor of the city, or to the treasurer of the town or plantation, where he or they shall reside at the time of so conveying, to the use of said

city, town or plantation, a sum equal to the value of such real estate so conveyed; which sum shall be sued for and recovered in the same manner, as is provided by the third section of this act.

[APPROVED APRIL 16, 1841.]

AN ACT IN ADDITION TO AN ACT FOR REGULATING MARRIAGE, AND FOR THE ORDERLY SOLEMNIZATION THEREOF. [CHAP. 181.]

SECTION 1. *Be it enacted by the Senate and House of Representatives in Legislature assembled,* That the clerk of any plantation, organized for any purpose, is hereby authorized to publish the intentions of marriage between any persons, either of whom resides within the limits of such plantation, and to grant certificates thereof, in the same manner, and under the same restrictions, and with the like effect, as if such publication and certificate were by the clerk of any city or town within this state.

Clerks of plantations, organized for any purpose may publish intentions of marriage.

SECT. 2. *Be it further enacted,* That this act shall be in force from the time of its signature by the governor.

[APPROVED APRIL 16, 1841.]

AN ACT IN RELATION TO MANUFACTURING CORPORATIONS.

[CHAP. 192.]

*Be it enacted by the Senate and House of Representatives in Legislature assembled,* That the stockholders in any company, which now is, or may hereafter be incorporated, in this state, for the purpose of manufacturing cotton, wool, silk, iron, steel or other materials, shall not be liable, individually, for the debts of said company or corporation: Provided, the treasurer of said corporation shall annually publish in one or more of the public newspapers printed in the county, where said corporation is located, and, in case there is no newspaper printed in said county, in a public newspaper, printed in one of the adjoining counties, a true and correct statement, on oath, of the amount of capital, actually paid into said company or corporation, and also a correct statement, on oath, of the amount of debts due from said corporation; provided the debts of said corporation shall not exceed fifty per cent. of the capital stock of said corporation, actually assessed and paid in.

Individual members, not to be held liable for company debts, if the treasurer publish an annual statement of capital paid into, and debts due from the company.

Provided the debts do not exceed one half of the capital.

[APPROVED APRIL 16, 1841.]

AN ACT EXTENDING THE POWERS OF THE DISTRICT COURT.

[CHAP. 193.]

*Be it enacted by the Senate and House of Representatives in Legislature assembled,* That any justice of the district court be,

Power of the

# STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND FORTY.

AN ACT TO REPEAL ALL THE ACTS WHICH ARE CONSOLIDATED IN THE REVISED STATUTES.

## ABSTRACT.

SECT. 1. Enumeration of repealed acts.

2. Repealed acts still in force, for certain purposes.
3. Repeal of repealing acts, not to revive the acts before repealed.
4. Where former provisions are embraced in the revised statutes, their efficacy deemed to continue without interruption.

SECT. 5. Special laws, not affected by a reenactment of the same provisions of the general laws.

6. Former acts to remain in force, till the corresponding provisions of this act shall take effect.

**SECTION 1.** BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES IN LEGISLATURE ASSEMBLED, That all the statutes hereinafter mentioned, and described by the years in which they were respectively enacted, and by their respective titles and the number of each chapter, be, and the same are hereby repealed, subject, however, to the provisions contained in the following sections of this act; that is to say:

### *Acts passed in the year 1620.*

- Chap. 30. An act relating to the punishment of convicts.
- Chap. 47. An act for the settlement of certain equitable claims, arising in real actions.
- Chap. 54. An act establishing a supreme judicial court within this state.
- Chap. 90. An act providing for the appointment of clerks of the courts in the several counties, and requiring them to render an account of all moneys received.
- Chap. 91. An act providing, that bonds shall be given by sheriffs and coroners to the treasurer of the state, and giving remedies thereon.
- Chap. 102. An act establishing the duties to be paid by certain officers therein named.
- Chap. 106. An act establishing the salary of certain officers.
- Chap. 165. An act providing for the security of the treasury of this state.

### *Acts passed in the year 1821.*

- Chap. 1. An act against treason and misprision of treason.
- Chap. 2. An act providing for the punishment of the crimes of murder, manlaughter, felonious maims and assaults and duelling, and for the prevention thereof.
- Chap. 3. An act providing for the punishment of rape, and for the prevention thereof.
- Chap. 4. An act providing for the punishment of incendiaries, and the perpetrators of other malicious mischief.
- Chap. 5. An act against sodomy and bestiality.
- Chap. 6. An act providing for the punishment of the crimes of burglary, and other breaking and entering of buildings.
- Chap. 7. An act providing for the punishment of [the] crimes of robbery and other larcenies, and for the prevention thereof.
- Chap. 8. An act against blasphemy, and profane cursing and swearing.
- Chap. 9. An act providing for the due observation of the Lord's day.
- Chap. 10. An act for the punishment of adultery, polygamy, lewdness and fornication.
- Chap. 11. An act against forgery and counterfeiting.
- Chap. 12. An act against perjury and subornation of perjury.
- Chap. 13. An act for the suppression and punishment of cheats.
- Chap. 14. An act respecting the wilful destruction and casting away of ships and cargoes, the custody of shipwrecked goods, and trade and navigation.
- Chap. 15. An act to protect the sepulchres of the dead.
- Chap. 16. An act to prevent the arrest of dead bodies.
- Chap. 17. An act to prevent routs, riots and tumultuous assemblies, and to suppress insurrections.
- Chap. 18. An act to prevent gaming for money or other property.
- Chap. 19. An act for the restraining the taking of excessive usury.
- Chap. 20. An act to prohibit certain officers of courts from buying promissory notes and other demands, for the purpose of making gain or profit in the collection thereof.
- Chap. 21. An act to prevent bribery and corruption.
- Chap. 22. An act for the protection of the personal liberty of the citizens, and for other purposes.

- Chap. 108. The first three sections of an act for the safe keeping of the records of the several courts of justice.
- Chap. 109. An act to provide for the safe keeping of public records, and for regulating the quality of paper for books of public records.
- Chap. 110. An act for providing and regulating prisons.
- Chap. 111. An act respecting houses of correction, and for suppressing and punishing of rogues, vagabonds, common beggars and other idle or disorderly persons.
- Chap. 112. An act to authorize the governor in certain cases to offer a reward, and for other purposes.
- Chap. 113. An act providing for the appointment of agents, for demanding and receiving fugitives from justice.
- Chap. 114. An act regulating towns, town meetings and choice of town officers.
- Chap. 115. An act regulating elections.
- Chap. 116. An act concerning the assessment and collection of taxes.
- Chap. 117. An act to provide for the education of youth.
- Chap. 118. An act directing the method of laying out, and making provision for the repair and amendment of highways.
- Chap. 119. An act for enabling proprietors of private ways and bridges to repair them in equal proportion.
- Chap. 120. An act making provision for erecting guide posts upon public roads.
- Chap. 121. An act for regulating drains and common shores.
- Chap. 122. An act ascertaining what shall constitute the legal settlement, and providing for the relief and support, employment and removal of the poor
- Chap. 124. An act for erecting work houses for the reception and employment of the idle and indigent.
- Chap. 125. An act for keeping watches and wards in towns, and for preventing disorders in streets and public places.
- Chap. 126. An act to diffuse the benefits of inoculation for the kine pock.
- Chap. 127. An act to prevent the spreading of the small pox and other contagious sickness.
- Chap. 130. An act respecting lost goods and stray beasts.
- Chap. 131. An act for the due regulation of weights and measures.
- Chap. 132. An act respecting engine men, fire engines, and the extinguishment of fire.
- Chap. 134. An act to regulate the sale of goods at public vendue.
- Chap. 135. An act concerning parishes.
- Chap. 136. An act for recording births and deaths by the clerks of towns.
- Chap. 137. An act defining the general powers and duties of manufacturing corporations.
- Chap. 138. An act defining the general powers and duties of turnpike corporations.
- Chap. 139. An act to define the powers, duties and restrictions of insurance companies.
- Chap. 140. An act enabling proprietors of aqueducts to manage the same.
- Chap. 141. An act to enable the proprietors of social, military and law libraries to manage the same.
- Chap. 148. An act to regulate the inspection of beef and pork, intended to be exported from this state.
- Chap. 149. An act to ascertain the quality of butter and hogs' lard, and for the more effectual inspection of the same.
- Chap. 150. An act to provide for the packing and inspection of pickled and smoked fish.
- Chap. 151. An act to ascertain the quality of pot and pearl ashes, and for the more effectual inspection of the same.
- Chap. 152. An act to provide for the inspection of hops for exportation.
- Chap. 154. An act regulating the exportation of tobacco, and the weight of onions in bunches.
- Chap. 155. An act regulating the exportation of flaxseed.
- Chap. 157. An act to regulate the manufacture of nails within this state.
- Chap. 158. An act for the admeasurement of boards, and regulating the tale of shingles, clapboards, hoops and staves, and for other purposes.
- Chap. 160. An act to prevent fraud in fire wood, bark or coal exposed to sale.
- Chap. 161. An act to prevent the exportation of unmanufactured calf skins, and to encourage the manufacture of leather boots and shoes.
- Chap. 162. An act to provide for the proof of fire arms.
- Chap. 163. An act regulating the packing and selling of paper within this state.
- Chap. 166. An act directing the manner in which notices, upon petitions to be presented to the legislature, may be given.
- Chap. 167. An act in furtherance of good discipline in the colleges of this state.
- Chap. 169. An act securing to mechanics and others, payment for their labor and materials, expended in erecting and repairing houses and other buildings with their appurtenances.
- Chap. 170. An act concerning apprentices.
- Chap. 171. An act against hawkers pedlers and petty chapmen.
- Chap. 172. An act respecting boats and lighters, employed in transporting stones, gravel or sand within this state.
- Chap. 173. An act for the protection of harbors and shores.
- Chap. 174. An act to prevent damage by mischievous dogs.
- Chap. 175. An act for the regulation of the Penobscot and Passamaquoddy tribes of indians.
- Chap. 176. An act for regulating ferries.
- Chap. 177. An act for regulating pilotage in the several ports in this state.
- Chap. 178. An act to regulate the herring fisheries.
- Chap. 179. An act for the preservation of certain fish.

*Acts passed in the year 1822.*

- Chap. 182. An act relative to the tender of money in suits at law.
- Chap. 183. An act respecting the collection of taxes on unimproved land, not taxable by the assessors of any town or plantation.
- Chap. 184. An act to prevent unnecessary suits.
- Chap. 186. An additional act regulating judicial process and proceedings.
- Chap. 187. An act in addition to an act regulating elections.
- Chap. 188. An act respecting the payment of moneys into the state treasury, and relating to the duties of the treasurer of the state, and of the treasurers of the several counties.



- Chap. 287. An act in addition to an act concerning registers of deeds.  
 Chap. 289. An act in addition to an act directing the time and manner of appointing county treasurers and for other purposes.  
 Chap. 291. An act respecting the inspection of beef.  
 Chap. 292. An additional act for regulating ferries.  
 Chap. 293. An act additional to an act to prevent fraud in fire wood, bark or coal exposed to sale.  
 Chap. 294. An act to establish a municipal court in the town of Portland.  
 Chap. 296. An act in addition to an act entitled an act concerning parishes.  
 Chap. 297. An act in addition to the several acts, now in force, respecting work houses and houses of correction, and for suppressing and punishing rogues, vagabonds, common beggars and other idle or disorderly persons.  
 Chap. 298. An act additional to an act for the better securing, and rendering more effectual, grants and donations to pious and charitable purposes.  
 Chap. 300. An act in addition to the several acts now in force respecting highways.  
 Chap. 301. An act authorizing the governor and council to settle accounts with indian agents, and for other purposes.  
 Chap. 303. An act in addition to an act providing for payment of costs in criminal prosecutions.  
 Chap. 304. An act additional to an act to establish a municipal court in the town of Portland.  
 Chap. 307. An act additional to an act for the limitation of actions, real and personal, and of writs of error.  
 Chap. 308. An additional act respecting the admission of attorneys.  
 Chap. 309. An act in addition to an act establishing and regulating the fees of the several officers and other persons therein mentioned.  
 Chap. 310. An act additional to an act prescribing the mode of taking depositions.  
 Chap. 311. An act in addition to an act to provide for the education of youth.  
 Chap. 312. An act in addition to an act to prevent and punish trespasses.  
 Chap. 313. An act authorizing the town of Portland, to assess a tax on the owners of dogs.  
 Chap. 317. An act in addition to an act, entitled an act respecting pounds and impounding beasts going at large or damage feasant.  
 Chap. 318. An act in addition to an act to secure rent to lessors of house lots and mill privileges, and for other purposes.

*Acts passed in the year 1826.*

- Chap. 323. An additional act for the regulation of the Penobscot and Passamaquoddy tribes of indians.  
 Chap. 324. An act extending the jurisdiction of the municipal court, and of justices of the peace.  
 Chap. 325. An act additional to an act respecting pounds, and impounding beasts going at large or damage feasant.  
 Chap. 326. An act establishing the times of holding the supreme judicial court within this state.  
 Chap. 327. An act concerning lotteries and lottery tickets.  
 Chap. 328. An act further regulating the admission of attorneys.  
 Chap. 329. An act to provide for the safe keeping of justices' records.  
 Chap. 333. An act to prevent intemperance at elections.  
 Chap. 337. An act additional to an act concerning the assessment and collection of taxes.  
 Chap. 338. An act providing for the organization of towns destitute of town officers.  
 Chap. 339. An act additional to an act providing for the government of the state prison, and for the punishment of convicts.  
 Chap. 340. An act making further provision for legal process.  
 Chap. 341. An act to exempt certain goods and chattels from attachment and execution, and from distress for taxes.  
 Chap. 342. An additional act respecting executors, administrators and guardians, and the conveyance of real estate in certain cases.  
 Chap. 343. An act establishing salaries for judges and registers of probate.  
 Chap. 344. An act additional to an act for the settlement of certain equitable claims, arising in real actions.  
 Chap. 347. An act additional to an act regulating judicial process and proceedings.

*Acts passed in the year 1827.*

- Chap. 350. An act additional to an act concerning the assessment and collection of taxes.  
 Chap. 352. An additional act relating to the inspection of mackerel.  
 Chap. 353. An act for the further protection of towns from fire.  
 Chap. 356. An act additional to an act establishing the times of holding the supreme judicial court within this state.  
 Chap. 357. An act respecting toll bridges.  
 Chap. 358. An act additional to an act to prevent frauds and perjury.  
 Chap. 359. An act additional to an act regulating judicial process and proceedings.  
 Chap. 361. An act in further addition to an act to provide for the education of youth.  
 Chap. 363. An act regulating the fees of jurors.  
 Chap. 368. An act making further provision respecting the punishment of convicts.

*Acts passed in the year 1828.*

- Chap. 373. An act establishing the salaries of the judge and register of probate for the county of Waldo.  
 Chap. 375. An additional act to provide for the education of youth.  
 Chap. 377. An act additional to an act enabling the owners of meeting houses to manage the same.  
 Chap. 378. An act additional to the several acts now in force relating to the inspection of butter and lard.  
 Chap. 379. An additional act to provide for the packing and inspection of pickled and smoked fish.  
 Chap. 380. An act authorizing judges of probate in certain cases to appoint guardians to married women.  
 Chap. 381. An act additional to an act extending the jurisdiction of the municipal court.

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- Chap. 474. An additional act extending the powers of the justices of the supreme judicial court in certain cases.
- Chap. 475. An act directing the manner in which district school meetings may be called.
- Chap. 477. An additional act providing for the government of the state prison, and for the punishment of convicts.
- Chap. 478. An additional act to exempt certain goods and chattels from attachment, execution and distress.
- Chap. 479. An act requiring notice to be given in cases of contested elections.
- Chap. 480. An additional act to promote the sale and settlement of public lands.
- Chap. 481. An act requiring a bond from the secretary of state.
- Chap. 483. An act regulating the payment of the salaries of registers of probate in certain cases.

*Acts passed in the year 1831.*

- Chap. 485. An act making further provision for the partition of real estate.
- Chap. 487. An additional act for the maintenance of bastard children.
- Chap. 494. An additional act to exempt from taxation, manufacturing companies of cotton, wool, iron and steel for limited times.
- Chap. 495. An additional act respecting highways.
- Chap. 497. An additional act regulating judicial process and proceedings.
- Chap. 498. An additional act concerning records of justices of the peace.
- Chap. 499. An additional act relating to the state prison.
- Chap. 500. An additional act directing the method of laying out, and making provision for the repair and amendment of highways, and providing for the appointment of county commissioners.
- Chap. 501. An additional act concerning the assessment and collection of taxes.
- Chap. 503. An act concerning corporations.
- Chap. 504. An act for the prosecution and punishment of accessories in felonies.
- Chap. 505. An additional act relating to appeals.
- Chap. 506. An additional act relating to engine men.
- Chap. 507. An act additional to an act establishing and regulating the fees of the several officers, and other persons therein mentioned.
- Chap. 508. An additional act respecting the attachment of property on mesne process.
- Chap. 509. An act regulating costs in criminal prosecutions.
- Chap. 510. An additional act to promote the sale and settlement of the public lands, excepting the fourth section.
- Chap. 511. An additional act to regulate the inspection of beef and pork.
- Chap. 513. An additional act exempting certain goods and chattels from attachment, execution and distress.
- Chap. 514. An act to abolish special pleadings.
- Chap. 517. An act respecting colleges.
- Chap. 518. An additional act regulating elections.
- Chap. 521. An act to secure to owners their property in logs, masts, spars and other timber.
- Chap. 522. An act in addition to an act regulating bail in civil actions.
- Chap. 523. An additional act concerning the municipal court for the town of Portland.

*Acts passed in the year 1832.*

- Chap. 1. An act in addition to an act to provide for the education of youth.
- Chap. 2. An additional act regulating elections.
- Chap. 3. An additional act regulating judicial process and proceedings.
- Chap. 6. An act regulating appeals in certain cases.
- Chap. 12. An act to alter the time of holding a meeting of the county commissioners in the county of Penobscot
- Chap. 13. An act in addition to the several acts to regulate the jurisdiction and proceedings of courts of probate.
- Chap. 15. An act to abolish the office of crier in the supreme judicial court and court of common pleas, and for other purposes.
- Chap. 17. An act additional to an act directing the method of laying out, and making provision for the repair and amendment of highways.
- Chap. 18. An act additional to regulate the inspection of beef and pork.
- Chap. 19. An additional act respecting the municipal courts.
- Chap. 21. An act relating to the duty of assessors.
- Chap. 24. An act for the encouragement of agriculture, horticulture and manufactures.
- Chap. 27. An act in addition to the several acts directing the method of laying out, and making provision for the repair and amendment of highways.
- Chap. 28. An act relative to the state prison.
- Chap. 30. An additional act to promote the sale and settlement of the public lands.
- Chap. 38. An act relative to the assessment and collection of taxes.
- Chap. 39. An act appropriating the income of certain ministerial funds to support schools.
- Chap. 42. An additional act directing the method of laying out, and making provision for the repair and amendment of highways, and providing for the appointment of county commissioners.
- Chap. 43. An act for ascertaining and establishing the jurisdictional limits of towns.
- Chap. 44. An act relative to the powers of sheriffs and their deputies, coroners and constables.

*Acts passed in the year 1833.*

- Chap. 48. An act altering the time of holding the supreme judicial court in the county of Cumberland,
- Chap. 49. An additional act respecting the qualifications of voters in town affairs.
- Chap. 50. An act additional to an act to regulate the inspection of beef and pork.
- Chap. 51. An act giving further remedy in cases of wilful trespass.
- Chap. 52. An act for the protection of the Mattanawcook and military road.
- Chap. 53. An act for the preservation of bridges.

- Chap. 148. An act to protect family burying grounds.  
 Chap. 149. An act additional to an act ascertaining what shall constitute the legal settlement, and providing for the relief and support, employment and removal of the poor.  
 Chap. 150. An act altering the time of holding the supreme judicial court in the county of Cumberland.  
 Chap. 151. An act directing the mode in which meetings of corporations may be called in certain cases.  
 Chap. 153. An act additional to an act providing for the appointment of public administrators, and enlarging the powers of judges of probate.  
 Chap. 154. An act to prevent the introduction of paupers from foreign ports or places.  
 Chap. 155. An act in addition to an act directing the method of laying out, and making provision for the repair and amendment of highways.  
 Chap. 156. An act to encourage the destruction of wolves and bears.  
 Chap. 158. An act additional to the several acts for the better regulation and management of the Penobscot tribe of indians.  
 Chap. 160. An act authorizing judges of probate, in certain cases, to grant license to husbands to make sale of real estate held in right of their wives.  
 Chap. 161. An additional act respecting parishes.  
 Chap. 165. An act to alter and amend the several acts and laws for the administration of justice.  
 Chap. 168. An additional act relative to laying out and making highways.  
 Chap. 170. An act additional to provide for the location of certain lands.  
 Chap. 172. An act exempting fishing boats from attachment.  
 Chap. 176. An act to regulate the sale of oats.  
 Chap. 177. An additional act regulating divorces.  
 Chap. 178. An act additional to an act regulating judicial process and proceedings.  
 Chap. 180. An act in addition to an act respecting wills and testaments, and regulating the descent of intestate estates.  
 Chap. 181. An act establishing the standard weight of potatoes.  
 Chap. 182. An act regulating costs in the judicial courts in certain cases, and reducing the fees of clerks of the judicial courts.  
 Chap. 183. An act additional to an act regulating judicial process and proceedings.  
 Chap. 184. An additional act relating to engine men.  
 Chap. 186. An additional act establishing the municipal court in the city of Portland.  
 Chap. 187. An act to incorporate the owners of meeting houses, and for other purposes.  
 Chap. 188. An act concerning mortgages and pledges of personal property, and property subject to any lien created by law.  
 Chap. 189. An act respecting cities.  
 Chap. 190. An additional act regulating elections.  
 Chap. 191. An act additional to an act to regulate the jurisdiction and proceedings of the courts of probate.  
 Chap. 192. An act additional to promote the sale and settlement of the public land.  
 Chap. 193. An act in addition to an act hereinafter named.  
 Chap. 195. An act for the relief of poor debtors.

*Acts passed in the year 1836.*

- Chap. 196. An act to alter and define the criminal jurisdiction of the judicial courts.  
 Chap. 198. An act restricting the powers of county commissioners in certain cases.  
 Chap. 200. An act concerning corporations.  
 Chap. 201. An act relative to the collection of state taxes and assessments made by county commissioners.  
 Chap. 202. An act additional to an act to provide for the inspection of hops for exportation.  
 Chap. 203. An act in relation to petitions for acts of incorporation for any turnpike, canal or rail road company.  
 Chap. 204. An act defining certain rights and duties of rail road corporations.  
 Chap. 205. An additional act respecting salaries of judges and registers of probate, *excepting the proviso in the first section.*  
 Chap. 206. An act additional to an act for the encouragement of agriculture, horticulture and manufactures.  
 Chap. 207. An act additional for more effectually ascertaining the quality of pot and pearl ashes, and regulating the inspector's fees.  
 Chap. 208. An act to authorize aldermen of cities and selectmen of towns to appoint measurers of salt, corn and grain.  
 Chap. 209. *The last nine sections* of an act additional to an act to organize, govern and discipline the militia of this state.  
 Chap. 210. An act to extend the powers of justices of the peace in certain cases, and further to regulate the process for maintenance of bastard children.  
 Chap. 211. An act concerning limited partnerships.  
 Chap. 212. An act concerning constables' and collectors' bonds.  
 Chap. 213. An act concerning toll bridges.  
 Chap. 214. An act to prohibit constables from acting as attorneys to parties in suits at law.  
 Chap. 216. An act in relation to indictments against towns for neglect to repair their highways.  
 Chap. 217. An additional act concerning corporations.  
 Chap. 218. An act in addition to an act respecting the collection of taxes on unimproved land, not taxable by the assessors of any town or plantation.  
 Chap. 219. An act additional to an act, directing the method of laying out, and making provision for the repair and amendment of highways.  
 Chap. 221. An additional act to prevent gaming for money or other property.  
 Chap. 223. An act to require certain newly incorporated towns to repay their just proportion of public taxes.  
 Chap. 224. An act additional to an act establishing salaries for judges and registers of probate.  
 Chap. 225. An act to provide for the more effectual suppression of houses of ill fame.  
 Chap. 226. An act concerning stud horses.

- Chap. 227. An additional act providing for payment of costs in criminal proceedings.  
 Chap. 228. An act in addition to an act regulating judicial process.  
 Chap. 230. An act for the further regulation of the state prison.  
 Chap. 231. An act to prohibit agencies for banks out of the state, private banking, and to regulate banks and banking.  
 Chap. 232. An act prohibiting arrests, and holding courts to try civil cases, on the fourth day of July, or the day of state elections, trainings or review.  
 Chap. 235. An act additional to an act to organize, govern and discipline the militia of this state.  
 Chap. 236. An act allowing additional pay to the justices of the supreme judicial court.  
 Chap. 237. An act to encourage the culture of silk within this state.  
 Chap. 238. An additional act concerning the limits of highways.  
 Chap. 239. An act additional to an act to prevent fraud in fire wood, bark or coal, exposed for sale.  
 Chap. 241. An additional act for the punishment of felonious assaults and attempts to poison.  
 Chap. 242. An act to provide for the repair of highways in certain unincorporated townships.  
 Chap. 243. An act in addition to an act, entitled an act to secure to owners their property in logs, masts, spars and other timber.  
 Chap. 244. An additional act to promote the sale and settlement of the public lands.  
 Chap. 245. An act supplementary to an act for the relief of poor debtors.  
 Chap. 246. An act altering the time of a term of the supreme judicial court in the county of Lincoln.  
 Chap. 247. An act to regulate the sale of rye and indian meal.  
 Chap. 248. An act further to regulate the fees of county attorneys.  
 Chap. 249. An additional act regulating elections.  
 Chap. 250. An act to authorize the collection of interest on executions.  
 Chap. 251. An act to authorize the cession of jurisdiction and real estate to the United States, in certain cases.

*Acts passed in the year 1837.*

- Chap. 254. An act to increase the salary of the register of probate in the county of Penobscot.  
 Chap. 255. An act additional to an act establishing salaries for judges and registers of probate.  
 Chap. 256. An additional act to provide for the education of youth.  
 Chap. 259. An act to regulate the sale of oats.  
 Chap. 261. An act to encourage the destruction of wolves.  
 Chap. 262. An additional act concerning the assessment and collection of taxes.  
 Chap. 266. An act relating to municipal courts.  
 Chap. 269. An act constituting the records of towns, plantations and school district clerks, evidence in certain cases.  
 Chap. 270. An act to prevent fraud in the purchase and sale of hay.  
 Chap. 272. An act authorizing attorneys in the court of common pleas, to practice law in the supreme judicial court in certain cases.  
 Chap. 273. An act to secure to mechanics and others, payment for their labor and materials, expended in erecting and repairing houses and other buildings with their appurtenances.  
 Chap. 275. An act providing for the organization of plantations.  
 Chap. 276. An act additional to an act to organize, govern and discipline the militia of this state.  
 Chap. 279. An additional act regulating the admission of attorneys.  
 Chap. 280. An act to provide for certain returns from banks and other corporations.  
 Chap. 281. An act to regulate elections within the city of Portland.  
 Chap. 285. An act additional to an act regulating judicial process and proceedings.  
 Chap. 286. An act further providing for the redemption of mortgages.  
 Chap. 288. An act relative to tenants in common.  
 Chap. 289. An additional act concerning corporations.  
 Chap. 290. An act authorizing the appointment of commissioners out of the state, to take the acknowledgment of deeds and other instruments of writing under seal, and to admit the same to record in this state, and also to take affidavits.  
 Chap. 292. An act additional to the several acts concerning capital crimes, and to an act regulating judicial process and proceedings.  
 Chap. 296. An act in addition to an act, entitled an act to regulate the jurisdiction and proceedings of the courts of probate.  
 Chap. 297. An act in addition to an act, ascertaining what shall constitute the legal settlement, and providing for the relief, support, employment and removal of the poor.  
 Chap. 298. An act supplementary to an act to secure to mechanics and others, payment for their labor and materials, expended in erecting and repairing houses and other buildings with their appurtenances.  
 Chap. 300. An act additional to the several acts in force regulating elections.  
 Chap. 301. An act additional to acts giving remedies in equity.  
 Chap. 303. An act additional relative to the state prison.

*Acts passed in the year 1838.*

- Chap. 304. An act supplementary to an act, entitled an additional act regulating the admission of attorneys.  
 Chap. 306. An act additional to an act for the due regulation of weights and measures.  
 Chap. 307. An act exempting farming tools and other articles from attachment on mesne process or execution.  
 Chap. 309. An act establishing the standard weight of ruta baga and mangel wurtzel.  
 Chap. 310. An act giving to one justice of the supreme judicial court jurisdiction in cases of divorce.  
 Chap. 313. An act additional relating to the assessment and collection of taxes.  
 Chap. 315. An additional act concerning the collection of taxes.  
 Chap. 316. An act to encourage industry and promote civilization among the indians of the Passamaquoddy and Penobscot tribes.  
 Chap. 318. An additional act authorizing attorneys in the court of common pleas, to practise law in the supreme judicial court in certain cases.  
 Chap. 320. An act to prevent fraud in the pressing of hay.

- Chap. 321. An additional act regulating judicial process.  
 Chap. 322. An additional act to regulate the jurisdiction and proceedings of the courts of probate.  
 Chap. 323. An act against kidnapping or selling for a slave.  
 Chap. 325. An act in relation to the mode of transfer of shares of capital stock of corporate bodies.  
 Chap. 327. An additional act concerning meeting houses.  
 Chap. 330. An act providing for the appointment of agents, for demanding and receiving fugitives from justice.  
 Chap. 331. An act, additional to the several acts, for the better regulation and management of the Penobscot tribe of indians.  
 Chap. 332. An act authorizing manufacturing corporations to redeem lands sold on execution, and for other purposes.  
 Chap. 333. An act additional to an act respecting mortgages and the rights in equity of redemption.  
 Chap. 336. An act further regulating judicial proceedings.  
 Chap. 337. An additional act to define the powers, duties and restrictions of insurance companies.  
 Chap. 338. An act additional respecting wills and testaments, and regulating the descent of intestate estates.  
 Chap. 339. An additional act to prevent the introduction of paupers from foreign ports or places.  
 Chap. 340. An act additional to an act to establish town lines.  
 Chap. 342. An additional act regulating divorces.  
 Chap. 343. An act additional to an act for the limitation of actions real and personal, and writs of error.  
 Chap. 344. An act concerning the attachment of real estate.  
 Chap. 345. An additional act relating to the assessment and collection of taxes, and partition of real estate.  
 Chap. 347. An act additional to an act, entitled an act, to apportion and assess on the inhabitants of this state a tax of fifty thousand, three hundred and ninety eight dollars, and sixty six cents.  
 Chap. 348. An act additional to an act regulating elections.  
 Chap. 349. An act additional to the several acts now in force to organize, govern and discipline the militia of this state.  
 Chap. 350. An act additional to an act, entitled an additional act concerning the assessment and collection of taxes.  
 Chap. 353. An act to repeal the first section of an act, entitled an additional act regulating the practice of physic.  
 Chap. 354. An act additional to promote the sale and settlement of the public lands.

*Acts passed in the year 1839.*

- Chap. 357. An act additional to the several acts now in force relating to the partition of real estate.  
 Chap. 358. An additional act exempting [certain] goods and chattels from attachment, execution and distress.  
 Chap. 359. An act additional to promote the sale and settlement of the public lands.  
 Chap. 360. An additional act respecting the repair and amendment of highways.  
 Chap. 361. An act additional to an act to regulate the jurisdiction and proceedings of courts of probate.  
 Chap. 362. An act for the limitation of criminal prosecutions.  
 Chap. 363. An act additional to an act concerning dower.  
 Chap. 364. An act additional to provide for the packing and inspection of pickled and smoked fish.  
 Chap. 365. An act additional for the support and regulation of mills.  
 Chap. 366. An act for the relief of sureties on poor debtors' bonds in certain cases.  
 Chap. 367. An act limiting the powers of county commissioners.  
 Chap. 368. An act further regulating judicial process and proceedings.  
 Chap. 370. An act additional to the several acts to secure to owners their property in logs, spars, masts and other timber.  
 Chap. 371. An act additional to an act for the protection of the Mattanawcook and military roads.  
 Chap. 372. An act additional to an act respecting mortgages and the rights in equity of redemption.  
 Chap. 373. An act to abolish the court of common pleas and establish district courts, *excepting the sixth, twelfth and thirteenth sections.*  
 Chap. 374. An act regulating the fees for justices' writs.  
 Chap. 375. An act additional to an act for the due regulation of weights and measures.  
 Chap. 376. An additional act relating to trespasses on the public lands.  
 Chap. 377. An act relating to divorces.  
 Chap. 379. An act to regulate the inspection and packing of clams.  
 Chap. 380. An act to alter the times of holding the supreme judicial court in the counties of Somerset, Penobscot, Washington, Hancock and Waldo within this state.  
 Chap. 382. An additional act regulating judicial process and proceedings.  
 Chap. 383. An act establishing the salaries of the judge and register of probate for the county of Piscataquis.  
 Chap. 384. An act requiring toll bridges which are or may be covered, to be suitably lighted.  
 Chap. 386. An act relating to days of grace on commercial paper, in certain cases.  
 Chap. 387. An act additional to an act to regulate the inspection of beef and pork.  
 Chap. 388. An act additional to an act relating to the Passamaquoddy tribe of indians.  
 Chap. 389. An act additional to an act concerning stud horses.  
 Chap. 390. An act concerning the mortgage of personal property.  
 Chap. 391. An additional act relating to highways.  
 Chap. 392. An act to protect family burying grounds.  
 Chap. 393. An act to establish the salary of the judge and register of probate in the county of Franklin.  
 Chap. 396. An act additional to the several acts for the better regulation and management of the Penobscot tribe of indians.  
 Chap. 398. An act in addition to an act to abolish the court of common pleas and establish district courts.  
 Chap. 399. An act additional to an act to organize, govern and discipline the militia of this state.  
 Chap. 400. An act additional to an act concerning corporations, passed on the sixteenth day of February one thousand eight hundred and thirty-six.

- Chap. 401. An act additional to an act regulating towns, town meetings and the choice of town officers, approved March nineteenth one thousand eight hundred and twenty one.
- Chap. 402. An act in relation to a state library.
- Chap. 403. An act to regulate the manufacture and inspection of lime and lime casks.
- Chap. 404. An act to limit the compensation of sheriff in the county of Piscataquis.
- Chap. 406. An act imposing additional duties upon the surveyor general.
- Chap. 407. An act in addition to an act, providing for the government of the state prison, and for the punishment of convicts.
- Chap. 408. An act in addition to an act respecting the offices and duties of the attorney general and county attorneys.
- Chap. 409. An act in addition to an act further to regulate the fees of county attorneys.
- Chap. 410. An act in addition to the several acts now in force regulating ferries.
- Chap. 411. An act for assessing and taxing turnpikes in the towns through which they pass.
- Chap. 412. An act additional to, and explanatory of the several acts now in force for the relief of poor debtors.
- Chap. 413. An act to encourage the rearing of oxen within this state.

*Acts passed in the year 1840.*

- Chap. 3. *Section, three, of* an act in addition to an act establishing the county of Aroostook.
- Chap. 8. An act to remedy certain defects in existing laws.
- Chap. 11. An act additional to an act for the limitation of criminal prosecutions.
- Chap. 16. An act regulating the taking of fish, and for the preservation thereof in the several rivers and streams emptying into rivers in this state.
- Chap. 21. An act additional to the several acts to regulate the jurisdiction and proceedings of courts of probate.
- Chap. 24. An act to limit the tenure of military office.
- Chap. 26. An act additional to prevent obstruction to ferries.
- Chap. 49. An act additional to the several acts now in force exempting certain articles from attachment.
- Chap. 50. An act repealing part of an act, establishing the duties to be paid by certain officers therein named.
- Chap. 52. An act additional to an act to organize, govern and discipline the militia of this state.
- Chap. 56. An act to provide for furnishing blank books to the cities, towns and plantations in this state.
- Chap. 58. An act in addition to the several acts for the relief of poor debtors.
- Chap. 60. An act additional to an act concerning the election of representatives.
- Chap. 66. An act to prevent disturbances in schools.
- Chap. 67. An act additional to an act establishing and regulating the fees of the several officers and other persons therein named.
- Chap. 70. An act to establish the compensation of surveyor general.
- Chap. 73. An act further regulating judicial process and proceedings.
- Chap. 77. An additional act relating to the militia.
- Chap. 80. An act additional to an act relating to the Passamaquoddy tribe of indians.
- Chap. 87. An act additional to an act to provide for the repair of highways in certain unincorporated townships.

SECT. 2. All the acts and parts of acts, mentioned in the first section of this act, and therein and thereby repealed, shall be and remain in full force, so far as they respect the trial and punishment of all crimes and offences therein mentioned, which shall have been committed, and the recovery of all penalties and forfeitures which shall have been incurred, before the time when this act shall become a law: and saving also, to all persons, all rights of action in virtue of any act repealed as aforesaid, and all actions and causes of action which shall have accrued in virtue of, or founded on any of said repealed acts, in the same manner as if such acts had never been repealed; but the proceedings in every such case shall be conformed, when necessary, to the provisions of the revised statutes.

SECT. 3. No act, which has heretofore been repealed, shall be revived by the repeal of the acts described in the first section of this act.

SECT. 4. All the provisions of the laws, described in the first section aforesaid, which are contained in the revised statutes, shall be deemed to have remained in force, from the time when such previous laws began to take effect, so far as they may apply to any office or trust, or any transaction or event, or any limitation, or any right or obligation, or the construction of any contract, already effected by such previous laws, notwithstanding the repeal of the statutes, as mentioned in the first section aforesaid.

SECT. 5. No private act, or act of local application, now unrepealed, shall be affected by any provision of the revised statutes inconsistent therewith, unless such provision be different from the former public or general law on the same subject.

**SECT. 6.** In all cases where any provisions of the revised statutes are made to go into operation at any time after the first day of April, in the year one thousand eight hundred and forty one, the corresponding provisions, if any, of the said repealed statutes shall continue in force until the said new provisions shall go into operation, unless where otherwise expressly provided.

**SECT. 7.** This act shall take effect and be in force from and after the first day of April, in the year one thousand eight hundred and forty one, except as provided in the preceding section.

IN THE HOUSE OF REPRESENTATIVES, October 21, 1840.

This bill, having had three several readings, passed to be enacted.

HANNIBAL HAMLIN, *Speaker*.

IN SENATE, October 21, 1840.

This bill, having had two several readings, passed to be enacted.

STEPHEN C. FOSTER, *President*.

October 22, 1840. Approved.

JOHN FAIRFIELD.

- Chap. 29. An act to provide for the general vaccination of the inhabitants of this state. March 8, 1832.  
 Chap. 33. An act for the preservation of Oldtown bridge. March 8, 1832.  
 Chap. 40. An act to preserve the Stillwater bridge. March 9, 1832.  
 Chap. 46. An act additional to an act, granting a lottery to encourage steam navigation in this state and for other purposes. March 9, 1832.  
 Chap. 54. An act in addition to the several acts to secure to the owners their property in logs, masts, spars and other timber. February 20, 1833.  
 Chap. 55. An act to remove the judicial courts in the county of York from the town of York to the town of Alfred. February 20, 1833.  
 Chap. 61. An act relating to lottery grants. February 25, 1833.  
 Chap. 68. An act providing for the choice of representatives in congress. February 28, 1833.  
 Chap. 83. An act additional to an act granting a lottery to encourage steam navigation in this state and for other purposes. March 4, 1833.  
 Chap. 102. An act additional to an act for the prevention of damage by fire and the safe keeping of gunpowder. February 15, 1834.  
 Chap. 106. An act additional to an act to exempt from taxation manufacturing companies of cotton, wool, iron and steel, for a limited time. February 21, 1834.  
 Chap. 127. An act to prevent obstructions in the navigation of Kennebec river. March 11, 1834.  
 Chap. 138. An act providing for the use of broad rimmed wheels in certain towns in the county of Penobscot. March 12, 1834.  
 Chap. 140. An act providing for the use of broad rimmed wheels within the town of Baileyville, Princeton and the indian township upon the Houlton and Baring road. March 12, 1834.  
 Chap. 147. An act abating certain taxes. February 6, 1835.  
 Chap. 169. An act additional respecting highways. March 17, 1835.  
 Chap. 173. An act enlarging the powers of constables in the town of Calais. March 19, 1835.  
 Chap. 205. The proviso in the first section of an additional act respecting the salaries of judges and registers of probate. March 1, 1836.  
 Chap. 209. The first four sections of an act to organize, govern, and discipline the militia of this state. March 5, 1836.  
 Chap. 220. An act to establish a registry of deeds in the eastern district of Lincoln county. March 22, 1836.  
 Chap. 229. An act laying a tax on the several counties in this state. March 28, 1836.  
 Chap. 234. An additional act to establish a registry of deeds for the eastern district of Lincoln county. March 30, 1836.  
 Chap. 240. An act concerning assignments. April 1, 1836.  
 Chap. 252. An act providing for the acceptance of the public money apportioned to the state of Maine, on deposit by the government of the United States. January 26, 1837.  
 Chap. 257. An act to relieve the public from the burden of toll at Back Cove bridge. February 16, 1837.  
 Chap. 258. An act constituting Ellsworth the shire town of the county of Hancock. February 17, 1837.  
 Chap. 263. An act to prevent the destruction of fish in Cathance river, in the county of Washington. March 7, 1837.  
 Chap. 265. An act providing for the disposition and repayment of the public money, apportioned to the state of Maine on deposit by the government of the United States. March 8, 1837.  
 Chap. 274. An act to prevent obstructions in the navigation of Union river. March 25, 1837.  
 Chap. 284. An act to regulate the running of lumber in Medomak river. March 28, 1837.  
 Chap. 287. An additional act providing for the distribution and repayment of the public money apportioned to the state of Maine on deposit by the government of the United States. March 29, 1837.  
 Chap. 291. An act to prohibit boom, dam and mill owners from stopping and detaining logs in certain cases. March 29, 1837.  
 Chap. 294. An act in addition to an act, entitled an act to relieve the public from the burden of toll at Back Cove bridge. March 29, 1837.  
 Chap. 299. An act concerning the municipal court at Hallowell. March 29, 1837.  
 Chap. 302. An act relating to fees received by the secretary of state. March 29, 1837.  
 Chap. 311. An additional act concerning the public money apportioned to the state of Maine. February 28, 1838.  
 Chap. 312. An act ceding to the United States of America, the jurisdiction of certain tracts of land for the purpose of erecting light houses thereon. February 28, 1838.  
 Chap. 328. An act establishing the county of Franklin. March 20, 1838.  
 Chap. 329. An act in addition to an act, concerning the public money apportioned to the state of Maine, passed February twenty eighth, in the year eighteen hundred and thirty eight. March 20, 1838.  
 Chap. 341. An act additional to an act securing to the owners their property in logs, masts, spars and other lumber. March 22, 1838.  
 Chap. 352. An act relative to lands forfeited to the state. March 23, 1838.  
 Chap. 355. An act to establish the county of Piscataquis. March 23, 1838.  
 Chap. 373. The ninth, twelfth and thirteenth sections of an act to abolish the court of common pleas, and establish district courts. February 25, 1839.  
 Chap. 378. An act ceding to the United States the jurisdiction of a certain tract of land for the purpose of erecting a light house thereon. March 4, 1839.  
 Chap. 335. An act constituting Calais the shire town of the county of Washington. March 12, 1839.  
 Chap. 394. An act authorizing the indians of the Penobscot tribe to elect their governor and lieutenant governor. March 15, 1839.  
 Chap. 395. An act establishing the county of Aroostook. March 16, 1839.  
 Chap. 414. An act additional to an act to organize, govern and discipline the militia of this state. March 23, 1839.  
 Chap. 30. An act to prevent obstructions in Machias river. March 3, 1840.  
 Chap. 83. An act additional to the several acts now in force to organize, govern and discipline the militia of this state. March 18, 1840.  
 Chap. 84. An act relative to lands forfeited to the state. March 18, 1840.  
 Chap. 88. An act to establish, regulate and preserve the booms on the Aroostook, Fish and St. John's rivers. March 13, 1840.



## UNREPEALED ACTS.

An act to modify and limit the terms and conditions of the act for separation relative to Bowdoin college, and encourage literature and the arts and sciences.	June 16, 1820.
An act to alter the law establishing Bowdoin college.	March 19, 1821.
An act to encourage literature and the useful arts and sciences.	June 23, 1820.
An act to establish a medical school in this state.	June 27, 1820.
An act to enlarge the powers of the Maine literary and theological institution.	June 19, 1820.
An act to change the name of the Maine literary and theological institution.	February 5, 1821.

# APPENDIX.

An act for the admission of the State of Maine into the Union.

Whereas, by an act of the state of Massachusetts, passed on the nineteenth day of June, in the year one thousand eight hundred and nineteen, entitled "an act relating to the separation of the District of Maine from Massachusetts proper, and forming the same into a separate and independent state," the people of that part of Massachusetts, heretofore known as the District of Maine, did, with the consent of the legislature of said state of Massachusetts, form themselves into an independent state, and did establish a constitution for the government of the same, agreeably to the provisions of said act, therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, from and after the fifteenth day of March, in the year one thousand eight hundred and twenty, the state of Maine is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever.

[APPROVED MARCH 3, 1820.]

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*Selections and extracts, from unrepealed and unrevised laws of Massachusetts and Maine, republished in this volume for more convenient reference.*

An act relating to the separation of the district of Maine from Massachusetts proper, and forming the same into a separate and independent state.

*Note.* The preamble and section, one, may be found recited in the fifth section of Article X, of the constitution of Maine. See page 57.

SECT. 2. *Be it further enacted,* That the inhabitants of the several towns, districts and plantations, in the district of Maine, qualified to vote for governor or senators, shall assemble in regular meeting, to be notified by warrants of the proper officers, on the fourth Monday of July next, and shall, in open meeting, give in their votes, on this question: "Is it expedient, that the district of Maine shall become a separate and independent state, upon the terms and conditions, provided in an act, entitled, "an act relating to the separation of the District of Maine from Massachusetts proper, and forming the same into a separate and independent state?" And the selectmen of the towns and districts, and the assessors of the plantations, shall, in open meeting, receive, sort, count and declare, and the clerks thereof, respectively, shall record the votes given for and against the measure; and the said selectmen, assessors and clerks, respectively, shall make out an exact return thereof, under their hands, and shall seal up and transmit the same to the office of the secretary of this Commonwealth, on or before the fourth Monday of August next. And all returns, not then made, shall be rejected in the counting; and the governor and council shall open and examine the said returns, made as aforesaid, and shall count the votes given on the said question: And the governor shall, by public proclamation, to be made as soon as the state of the votes can be ascertained, after the said fourth Monday of August next, make known the result, by declaring the number of votes appearing in favor of the separation of said District, as aforesaid, and the number of votes appearing against it. And, if the number of votes for the measure shall exceed the number of votes against it by fifteen hundred, then, and not otherwise, the people of said District shall be deemed to have expressed their consent and agreement, that the said District shall become a separate and independent state, upon the terms and conditions above stated; and, in case of such majority, the governor, in his said proclamation, shall call upon the people of said District to choose delegates to meet in convention for the purposes, and in the manner hereinafter provided; and, in addition to publish said proclamation, in one or more of the public newspapers printed in Boston, and in the District of Maine, copies of the same, duly authenticated, shall, as soon as can conveniently be done, after the making of the same, be transmitted to the office of the clerks of the courts of common pleas, in the several counties of the District of Maine, for public examination; and one such copy, at least, shall be transmitted to the convention of delegates hereinafter mentioned, when said convention shall be formed.

appoint a secretary pro tempore, for said new state : and the said convention shall regulate the pay of its members ; and the person, authorized by said convention, may draw upon the treasury of the Commonwealth for the amount of the pay roll, not, however, to exceed the amount of the money paid into the treasury by the several banks within said District, for the tax upon the same, due and payable on the first Monday of October next ; and the sum or sums, so drawn for and paid out of the treasury, shall be a charge upon the new state in the division of the property, provided for in the fourth article of the terms and conditions, stated in the first section of this act.

**SECT. 5.** *Be it further enacted,* That until a governor of the proposed state shall be chosen and qualified according to the constitution, which may be in operation in said state, the person, last chosen president of the said convention, shall, from and after the fifteenth day of March next, have all the power of the governor and council under the constitution of Massachusetts, until a new governor shall be chosen and qualified in the said proposed state ; excepting only, that the said president shall not have the power to remove from office any officer, who may be duly qualified, and executing the duties of his office, according to the intent and meaning of this act.

And, in order that there may be no failure of justice, and that no danger may arise to the people of the said District of Maine, after the fifteenth day of March next, and before the government of the said state shall be fully organized ; therefore,

**SECT. 6.** *Be it further enacted,* That all the laws which shall be in force within said District of Maine, upon the said fifteenth day of March next, shall still remain and be in force, within the said proposed state, until altered or repealed by the government thereof, such parts only excepted, as may be inconsistent with the situation and condition of said new state, or repugnant to the constitution thereof. And all officers, who shall, on the said fifteenth day of March next, hold commissions, or exercise any authority within the said District of Maine, under the Commonwealth of Massachusetts, or by virtue of the laws thereof, excepting only the governor, lieutenant governor and council, the members of the legislature, and the justices of the supreme judicial court of the said Commonwealth of Massachusetts, shall continue to have, hold, use, exercise and enjoy all the powers and authority to them respectively granted or committed, until other persons shall be appointed in their stead, or until their respective offices shall be annulled by the government of said proposed state. And all courts of law, whatsoever, within the said proposed state, excepting only the supreme judicial court, shall proceed to hear and determine all causes, matters and things, which are or may be commenced or depending before them, respectively, upon the said fifteenth day of March next, or at any time afterwards, and before the government of the said proposed state shall establish new courts within the same ; and shall continue, from and after the said fifteenth day of March next, to exercise the like power and authority, and in like manner as they now by law may do, until such new courts shall be so established in their stead.

**SECT. 7.** *Be it further enacted,* That all actions, suits and causes, civil and criminal, and all matters and things whatsoever, that shall, on the said fifteenth day of March next, be in any manner depending in the supreme judicial court of the said Commonwealth of Massachusetts, then last holden within any county in the said District of Maine, and all writs, recognizances and other processes whatsoever, that may be then returnable to the said supreme judicial court, shall be respectively transferred, and returned to, have day in, and be heard, tried and determined in the highest court of law, that shall be established in the said new state, by the government thereof, and at the first term of such court, that shall be held within the county in which such action, writ, process, or other matter or thing, may be so pending or returnable. And, in all cases of appeals from any circuit court of common pleas, or probate or other court, which shall be made after the said fifteenth day of March next, in any action, cause, or suit whatsoever, and which would by law be made to the said supreme judicial court thereof, it shall be sufficient for the appellant to claim an appeal, without naming or designating the court appealed to ; and such appeal shall be entered at the supreme or superior judicial court, or highest court of law, to be established by the government of the said new state, which shall first thereafter be held within or for the county in which such action, cause or suit may be pending, and shall there be heard, tried and determined, according to law.

*Provided however,* That nothing contained in this section shall be understood or construed to control, in any degree, the right of the people of the said new state, or the government thereof, to establish judicial courts, in such manner, and with such authority as they shall see fit ; nor to prevent the said people or their government from making any other provisions, pursuant to their constitution, and not repugnant to the terms and conditions above set forth, respecting all the said actions, suits, processes, matters and things, herein above mentioned, as they shall think most proper, to prevent the discontinuance thereof, and to avoid any delay or failure of justice.

[PASSED JUNE 19, 1819.]

running northerly by the east line of number seven, and by the east line of number ten, to the southeast corner of township, number sixteen; from thence due north to the highlands, including all the islands on the sea coast of the said new county, lying between lines drawn due south from the easterly part of the county of Lincoln, as before described, and the northeasterly corner of Goldsborough aforesaid; and all the towns, districts and lands within said bounds shall, from and after the first day of May, one thousand seven hundred and ninety, be and remain one entire and distinct county, by the name of *Hancock*, of which Penobscot shall be the shire or county town; and the inhabitants of said county of Hancock shall have, use, exercise and enjoy all such powers, privileges and immunities as by law the inhabitants of any other county, within this commonwealth, have, use, exercise and enjoy.

SECT. 5. *And be it further enacted*, That the eastermost of the two new counties aforesaid shall be bounded in the following manner, *viz*: westerly by the easterly line of the county of Hancock afore described; on the south and southeast by the sea or western ocean; on the north by the utmost northern limits of this Commonwealth; and easterly by the river *Saint Croix*; comprehending all the lands within this commonwealth to the eastward of the line of the county of Hancock aforesaid, including all the islands on the sea coast of the said eastermost county; and all the towns, districts and lands within said bounds, together with the islands aforesaid, shall, from and after the first day of May, in the year of our Lord, one thousand seven hundred and ninety, be and remain one entire and distinct county, by the name of *Washington*; of which Machias shall be the shire or county town. And the inhabitants of the said county of Washington shall have, use, exercise and enjoy, all such powers, privileges and immunities, as, by law, the inhabitants of any other county within this commonwealth, have, use, exercise and enjoy.

[PASSED JUNE 25, 1789.]

An act setting off part of the county of Hancock, and annexing it to the county of Lincoln. [EXTRACT.]

SECT. 1. *Be it enacted, &c.*, That all the lands contained within the following bounds, namely, beginning at Little Duck Trap, so called, thence running northwesterly on the northeasterly line of the town of Camden, to the northerly corner of said Camden; thence continuing on the same course, with the northeasterly line of said Camden, until it intersects the dividing line between the counties of Lincoln and Hancock; thence running southerly to Union; thence southeasterly on the east line of Union, Warren and Thomaston, to Penobscot bay; thence northerly by said bay to Little Duck Trap, the first mentioned bound, with all the inhabitants thereon, shall be and hereby are set off from the county of Hancock, and annexed to the county of Lincoln.

[PASSED MARCH 3, 1791.]

An act to divide the county of Lincoln, and to constitute the northerly part thereof a separate county, by the name of the county of Kennebec. [EXTRACT.]

SECT. 1. *Be it enacted, &c.*, That the county of Lincoln shall be divided, by a line beginning on the westerly line of the county of Hancock, at a place from which a line running west northwest shall strike the northeasterly corner of the town of Harlem; from thence running southeasterly by the easterly line of said town to the southeasterly corner thereof; thence southwesterly on a straight line to the northeasterly corner of Pittston; thence by the easterly line of said Pittston to the southeasterly corner thereof; thence westerly by the southerly line of said Pittston to the southwesterly corner of said town last mentioned; thence northwesterly by the westerly line of said Pittston to the mouth of Purgatory stream, so called, which empties itself into Cobbesecontee stream, so called; thence west northwest to the east line of the town of Monmouth; thence southerly by the east line of said Monmouth to the southeasterly corner thereof; thence westerly by the southerly line of said Monmouth to the westerly corner of said town; thence west to the easterly line of the town of Greene; thence southerly by the easterly line of said Greene to the southeasterly corner thereof; and thence westerly by the southerly line of said Greene to Androscoggin river, or the dividing line between the counties of Cumberland and Lincoln; and that the county of Lincoln aforesaid, be, and the same is hereby declared to be, bounded northerly and westerly by the line aforesaid.

the state of New Hampshire and the county of Kennebec, and on the northerly side of the dividing line aforesaid, excepting the towns of Wilton, Temple, Avon, and township, number three, on Sandy river, northerly of Avon, which towns shall be considered as belonging to the county of Kennebec, shall be, and the same is, hereby formed and erected into an entire and distinct county, by the name of *Oxford*, of which Paris shall be the shire or county town; and the inhabitants of the said county of Oxford shall hold, possess, use, exercise and enjoy all the powers, rights and immunities, which, by the constitution and laws of this Commonwealth, the inhabitants of any county within the same do hold, possess, use, exercise, enjoy, and are entitled to.

[PASSED MARCH 4, 1805.]

An act to divide the county of Kennebec, and to constitute the northerly part thereof into a county by the name of the county of Somerset. [EXTRACT.]

SECT. 1. *Be it enacted, &c.*, That the county of Kennebec shall be divided by a line, beginning on the westerly line of the county of Hancock, at the northeasterly corner of township, number four, north of the Waldo Patent; thence running westerly on the northerly line of said township and the town of Unity, to the northwest corner of the town of Unity aforesaid; thence due west, to the easterly line of the town of Clinton; thence northerly by said Clinton, to the northeast corner thereof; thence westerly by the northerly line of Clinton, to Kennebec river; thence down the middle of said river, to the line between the towns of Waterville and Fairfield; thence westerly between the towns last mentioned, to the southwesterly corner of said Fairfield; thence westerly on a straight line, to the southeasterly corner of the town of Mercer; thence westerly, on the southerly line of said town of Mercer, to the easterly line of the town of New Sharon; thence northwesterly, on the northeasterly line of the town of New Sharon aforesaid, to the easterly line of the town of Farmington; thence northerly and westerly, on the easterly and northerly line of said town of Farmington, to the easterly line of the town of Temple; thence northerly and westerly on the easterly and northerly line of the town of Temple, to the easterly line of the county of Oxford: and the bounds of the county by this act created, on the east, shall be the line heretofore established between the counties of Hancock and Kennebec; and on the west, by the line between the counties of Kennebec and Oxford; and on the north, by the line on the high land; being the boundary between the District of Maine and the Province of Lower Canada.

SECT. 2. *Be it further enacted*, That all and every part and parcel of the late county of Kennebec, included within the lines before described, shall be, and the same is, hereby formed and erected into an entire and distinct county, by the name of *Somerset*; of which Norridgewock shall be the shire or county town. And the inhabitants of the said county of Somerset shall hold, possess, use, exercise and enjoy, all the powers, rights and immunities, which by the constitution and laws of this Commonwealth, the inhabitants of any county within the same do hold, possess, use, exercise, enjoy, and are entitled to.

[PASSED MARCH 1, 1809.]

An act to alter and establish a part of the line between the counties of Kennebec and Somerset.

*Be it enacted, &c.*, That from and after the passing of this act, a part of the line between the counties of Kennebec and Somerset shall be as follows, viz. beginning at the northwest corner of township, number four, now Kingville, and running due west until it strikes the line of the town of Clinton, at a monument of stones there to be erected.

[PASSED FEBRUARY 26, 1813.]

An act to ascertain and establish a part of the west line of the county of Somerset, and for other purposes. [EXTRACT.]

*Be it enacted, &c.*, That from and after the passing of this act, the west line of the tract of land, called Bingham's Tract or Patent, or otherwise called the Million Acres, lying on both sides of Kennebec river, until it intersects the north line of said Bingham's Tract, including the whole of said Million acres, shall be, and hereby is established, and declared to be, the west line of said county of Somerset.

[PASSED FEBRUARY 2, 1819.]

dividing the townships, numbered thirty five and thirty six, forty one and forty two, four and five, to the north line of the Bingham purchase: and said line is hereby declared to be the true boundary line, so far as it extends, any law to the contrary notwithstanding.

[PASSED MARCH 17, 1831.]

An act to annex the town of Corinna to the county of Penobscot. [EXTRACT.]

*Be it enacted, &c.*, That the town of Corinna, in the county of Somerset, be, and the same hereby is, set off from said county of Somerset, and annexed to, and made part of, the county of Penobscot.

[PASSED FEBRUARY 10, 1833.]

An act to annex the town of Litchfield to the county of Kennebec. [EXTRACT.]

*Be it enacted, &c.*, That the town of Litchfield, in the county of Lincoln, be, and the same hereby is, set off from said county of Lincoln, and annexed to, and made part of the county of Kennebec.

[PASSED MARCH 10, 1835.]

An act establishing the county of Franklin. [EXTRACT.]

SECT. 1. *Be it enacted, &c.*, That, from and after the date of the proclamation of the governor as is hereinafter provided, the towns of New Sharon, Chesterville, Wilton, Temple and Farmington in the county of Kennebec; and Jay, Carthage, Weld, Berlin, Madrid, townships, numbered six, Letter E. and D. in the county of Oxford, thence extending northerly from the northwest corner of Letter D. on the line betwixt townships, numbered three and four, through the several ranges of townships to Canada line, so as to include three tiers of townships west of the west line of the Bingham Purchase in said county of Oxford; and Industry, New Vineyard, Strong, Avon, Phillips, Freeman, Salem, Kingfield, townships numbered four in the first range west of Kingfield, three and four in the second range, and the south half of township, numbered four, in the third range of the Bingham Purchase in the county of Somerset, be and hereby are constituted and made a county by the name of *Franklin*, whereof Farmington shall be the shire town; and the inhabitants of said territory, towns and plantations, from and after the date of the proclamation of the governor, as is hereinafter provided, shall have and possess, use and enjoy, all the powers, rights, privileges and immunities, and be subject to all the duties which by the constitution and laws of this state, are granted to and imposed upon the inhabitants of other counties.

[PASSED MARCH 20, 1835.]

An act to establish the county of Piscataquis. [EXTRACT.]

SECT. 1. *Be it enacted, &c.*, That from and after the last day of April next, all that portion of territory lying north of the south lines of Parkman and Wellington, in the county of Somerset, and lying north of the north lines of the towns of Dexter, Garland, Charleston, Bradford, and south line of Kilmarnock, in the county of Penobscot; and bounded east by the east lines of Milton, Kilmarnock and townships, numbered four, in the eighth and ninth ranges; and thence bounded east by a line running north, from the northeast corner of said township, numbered four in the ninth range, to the north line of the state; and bounded on the west by the west lines of Wellington, Kingsbery, Shirley and township, number two, in the fifth range; and thence bounded west by a line running north, from the northwest corner of said township number two, to the Kennebec river; thence up and by the southerly bank of said river to Moose Head lake; thence bounded westerly by the westerly margin of said lake, to the northwest angle of said lake—and thence bounded west by a line running north to the north line of the state—be and the same is hereby constituted and made a county, by the name of *Piscataquis*: and the inhabitants of said territory, from and after the last day of April next, shall have, possess, use, and enjoy, all the powers, rights and immunities, and be subject to all the duties, which by the constitution and laws of the state, are granted and imposed upon the inhabitants of other counties.

[PASSED MARCH 23, 1838.]

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